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ILO CONVENTION NO. 160

NOVEMBER 14 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

Mr. PELL, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 101-2]

The Committee on Foreign Relations, to which was referred a Certified Copy of the Convention (No. 160) Concerning Labor Statistics, adopted by the International Labor Conference at Geneva on June 25, 1985, having considered the same, reports favorably thereon with a declaration and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purpose of this Convention is to call upon all ratifying governments to collect, compile and publish basic labor statistics in any or all of nine subject areas. The U.S. Government already collects, compiles and publishes basic labor statistics in all nine of the subject areas covered by Convention 160. Therefore, ratification of this Convention would not require the United States to alter in any way its law or practice in this area.

BACKGROUND

In June 1985, the United States Government, employer and worker delegates to the International Labor Conference voted for the adoption of Convention 160. This Convention was adopted by a vote of 422 for, 0 against, with 7 abstentions.

On July 15, 1988, the President's Committee on the ILO unanimously agreed to recommend that the President submit this Convention to the U.S. Senate with a request for advice and consent to ratification. On that date, the President's Committee on the ILO was formally advised by its Tripartite Advisory Panel on International Labor Standards that the panel had unanimously concluded

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that there are no obstacles in law or practice to the United States ratification of Convention 160.

The review of this Convention was conducted in accordance with the three ground rules for tripartite review of ILO conventions agreed upon during the ratification of Convention 144. The three ground rules are: (1) each and every ILO convention will be examined on its own merits on a tripartite basis; (2) if there are any differences between the Convention and Federal law and practice, they will be dealt with in the normal legislative process; and (3) there is no intention to change State law and practice by Federal action through ratification of ILO conventions and the tripartite examination will include possible conflicts between Federal and State law that would be caused by ratification.

Major Provisions

The following is a statement of U.S. law and practice concerning Convention 160 prepared by the Department of Labor:

GENERAL PROVISIONS

Article 1

Under this article, the ratifying member undertakes to "regularly collect, compile and publish basic labor statistics" in any or all of nine areas. These statistics will be expanded according to the ratifying country's available resources.

Article 2

Under this article, a ratifying member "shall take into consideration" the ILO's standards and guidelines when it is designing or revising the methods used in the development of the statistics required under Convention 160.

Currently, the BLS takes ILO standards and guidelines into consideration in developing labor statistics programs. Such consideration facilitates BLS's comparisons of United States and foreign labor conditions which draws on ILO publications such as International Labor Office, International Recommendations on Labor Statistics, Geneva, 1976. BLS also participates in the ILO-sponsored International Conference of Labor Statisticians, convened every 5 years, which helps formulate ILO standards and guidelines on labor statistics.

Article 3

Under this article, the ratifying member promises to consult "representative organizations of employers and workers" in designing or revising the statistics required under Convention 160.

Currently, the United States, through the BLS, continuously consults with employer and worker organizations on the development and modification of labor statistics programs. The consultation typically takes place at twice-a-year meetings between BLS staff and the long-standing BLS Business and Labor Research Advisory councils.

Article 4

Under this article, the ILO assures ratifying members that they are not obligated under the Convention to publish data concerning any single individual, household or enterprise.

Article 5

Under this article, the ratifying member undertakes to communicate to the ILO the published statistics that it is compiling in accordance with the Convention. This information should include reference information, such as titles and reference numbers and the dates of the publications' release.

Article 6

Under this article, the ratifying member undertakes to describe in detail to the ILO "the sources, concepts, definitions and methodology" used in compiling the labor statistics for this Convention. The ratifying member also undertakes to publish the descriptions and keep them updated.

BASIC LABOR STATISTICS

Article 7

Under this article, the ratifying member shall compile statistics that are representative of the country as a whole concerning the economically active population, employment, unemployment and visible underemployment.

Currently, the BLS compiles such statistics from the monthly Current Population Survey. This Survey contains data concerning the employment status of the noninstitutional population over 16 years of age. The data is analyzed according to age, race, sex, ethnic background and educational attainment as well as other categories. The Survey analyzes data on employed persons according to occupation, industry, hours of work, full- or part-time status and the reasons for working part-time. The Survey also analyzes unemployment persons by occupation and industry. The data includes information on the duration of unemployment, the reasons for unemployment and the methods used to find employment. (See Appendix B, and Appendix C, Exhibit No. 1.)

Article 8

Under this article, the ratifying member shall compile statistics that are representative of the country as a whole concerning the structure and distribution of the economically active population.

Currently, the BLS compiles such statistics from the monthly Current Population Survey. The contents of the Survey are described under Article 7. (See Appendix B, and Appendix C, Exhibit No. 2.)

Article 9

Under section one of this article, the ratifying member shall compile statistics on the average earnings and hours of work for all important categories of workers and branches of economic activity.

Under section two of this article, the ratifying member shall compile, where appropriate, time rates of wages and normal hours of work for all important occupations and branches of economic activity. Any statistics compiled under this article shall be representative of the country as a whole.

Currently, the BLS compiles such statistics from the Monthly Employment and Earnings Series and from its Industry Wage Survey program. The Survey includes data on the gross hours and earnings of workers in 454 industries. The Survey also contains hourly earnings of workers in the major manufacturing industries and the real average weekly earnings for major industrial groups. The Survey also provides nationwide averages and distributions of earnings for selected occupations in major industries. (See Appendix B, and Appendix C, Exhibit No. 3.)

Article 10

Under this article, the ratifying member shall compile statistics of the wage structure and distribution for employees in important branches of economic activity.

Currently, the BLS compiles such statistics from its Industry Wage Survey program. These Industry Surveys include data on the averages and distributions of earnings for representative occupations analyzed nationwide and according to regions and selected areas. The Surveys also include data on scheduled weekly hours and supplementary benefits. (See Appendix B, and Appendix C, Exhibit No. 4.)

Article 11

Under this article, the ratifying member compile statistics on labor costs in important branches of economic activity. If possible, the scope of these statistics shall be consistent with the coverage of data on employment and hours of work.

Currently, the BLS compiles such statistics from its quarterly Employment Cost Index. The survey includes compensation and wage data for the total civilian population analyzed according to type of industry and occupational group. Compensation and wages in private industry are analyzed according to industry and occupational group as well as according to the bargaining status of the workers and geographic region. Additional wage and salary data in the private economy is analyzed according to more particular industries such as construction, transportation, finance, real estate, wholesale trade and retail trade, and according to more particular occupational groups such as professional and technical workers, administrators, clerical workers, laborers and those working in services. (See Appendix B, and Appendix C, Exhibit No. 5.)

Article 12

Under this article, the ratifying member shall compute consumer price indices of the consumption patterns of significant population groups or of the total population.

Currently, the BLS computes such indices from its monthly Consumer Price Index. This monthly index measures the price change for a specific array of 382 consumer goods and services. The Index contains data on the average cost of these items in the average American metropolitan area. The Index also contains data for 23 specific metropolitan areas and four geographic regions. Data is also compiled on the cost of selected individual commodities and services. (See Appendix B, and Appendix C, Exhibit No. 6.)

Article 13

Under this article, the ratifying member shall compile statistics on household income and expenditures or, if possible, family income and expenditures. These statistics shall cover all types of households or families and shall be representative of the country as a whole.

Currently, the BLS compiles such statistics from its annual Survey of Consumer Expenditures and Income. The Survey includes data concerning the income and expenditures of American consumers, analyzed for the United States as a whole and for the various geographic regions. Selected data is further analyzed by income class, family size and other demographic and economic characteristics. (See Appendix B, and Appendix C, Exhibit No. 7.)

Article 14

Under section one of this article, the ratifying member shall compile statistics on occupational injuries. Under section two of this article, the member shall compile statistics on occupational diseases. Any statistics compiled under this article shall be representative of the country as a whole and, where possible, cover all branches of economic activity.

Currently, the BLS compiles such statistics from its annual Survey of Occupational Injuries and Illnesses. The Survey estimates the incidence of occupational injuries and illnesses for private industry. The data includes estimates of the total recorded cases, including fatal and nonfatal cases, lost workday cases, total lost workdays and nonfatal cases without lost workdays. (See Appendix B, and Appendix C, Exhibit No. 8.)

Article 15

Under this article, the ratifying member shall compile statistics on industrial disputes which are representative of the country as a whole and which cover all branches of economic activity.

Currently, the BLS compiles such statistics from its monthly series on major work stoppages. This monthly series contains data on the number of work stoppages, the number of workers involved and the number of days the workers remained off the job. This data includes all major work stoppages involving one thousand or

more workers and lasting more than one shift. (See Appendix B, and Appendix C, Exhibit No. 9.)

ACCEPTANCE OF THE CONVENTION

Article 16

Under section one of this article, the ratifying member accepts the obligations to maintain labor statistics in one or more of the areas described in Articles 7 through 15. Under section two of this article, the member shall specify the areas in which it will maintain labor statistics. The member may, under section three of this article, notify the ILO at a later date that it will maintain labor statistics in additional areas. The member is required under section four of this article to report on the position of its law and practice for those articles in respect of which it has not accepted the obligations of the Convention.

Article 17

Under section one of this article, the ratifying member may initially limit the scope of the statistics it agrees to keep under this Convention to specified categories of workers, sectors of the economy, branches of economic activity or geographical area.

Under section two of this article, the member must indicate the limitations on its ratifications and the reasons for the limitations. Subsequent reports to the ILO shall indicate the extent to which it is proposed that the application of the Convention be expanded.

Under section three of this article, the member may introduce subsequent limitations on the technical scope of the statistics covered by Articles 7 through 15. These limitations should be made after consulting representative organizations of employers and workers, and should be reported in the manner described in section two of this article.

As indicated in the discussion of the requirements of Articles 7 through 15, the United States is presently able to meet the requirements for each of the nine areas of basic labor statistics covered by the Convention. It would not be necessary for the United States to indicate that it is limiting the scope of its acceptance of the obligations of the Convention.

Article 18

This Convention revises the 1938 Convention concerning Statistics of Wages and Hours of Work.

FINAL PROVISIONS

Article 19

The formal ratification of this Convention shall be communicated to the Director-General of the ILO for registration.

Article 20

This Convention will be binding on all members who have registered with the Director-General once two members have registered.

Thereafter, the Convention will become binding on members twelve months after they register.

Article 21

Under section one of this article, a member may denounce the entire Convention ten years after the Convention became binding on the member. Such a denunciation takes effect one year after it is communicated to the Director-General.

Under section two of this article, if a member does not denounce the Convention within one year after the Convention has been binding upon the member for ten years, the Convention will continue to be binding upon the member for ten more years.

Under section three of this article, a member may withdraw from the obligations of any of the Articles 7 through 15 by a declaration communicated to the Director-General five years after the Convention became binding upon the member.

The member must, however, maintain the obligations of the Convention for at least one of the Articles 7 through 15. Under section four of this article, if the member does not withdraw its acceptance of its obligations under Articles 7 through 15, then it accepts the obligations of the Convention for five more years. The member may withdraw its acceptance of its obligations under Articles 7 through 15 at subsequent five year intervals.

Article 22

The Director-General shall communicate to the members the registration of all ratifications and denunciations and the dates when those events will come into effect.

Article 23

The Director-General shall communicate all ratifications and denunciations of this Convention to the Secretary-General of the United Nations.

Article 24

The Governing Body of the ILO shall present a report on this Convention and whether it should be revised in whole or in part at such time when the Governing Body considers such a report necessary.

Article 25

If a new Convention is adopted by the conference, revising this Convention in whole or in part, then adoption of the new Convention will mean automatic renunciation of this Convention and members will no longer be allowed to ratify this Convention. This Convention will remain in force for those members who have adopted it but have not accepted the revised Convention.

Article 26

The English and French of this Convention are equally authoritative.

Committee Action

On November 1, 1989, the Committee held a public hearing on ILO Convention No. 160 Concerning Labor Statistics. Testimony was received from the following individuals: (1) The Honorable Elizabeth Dole, Secretary of Labor; (2) Janet L. Norwood, Commissioner, Bureau of Labor Statistics; (3) Anthony G. Freeman, Special Assistant to the Secretary of State and Coordinator for International Labor Affairs, Department of State; (4) Robert P. Davis, Solicitor of Labor; (5) Rudy Oswald, Director, Economic Research Department, AFL–CIO, Washington, D.C.; (6) Brian J. Glade, Director of International Affairs, U.S. Council for International Business, New York, accompanied by Edward E. Potter, McGuinness & Williams, Counsel to the U.S. Council for International Business; and (7) F.M. Lunnie, Jr., Director of Employee Relations, National Association of Manufacturers.

The Committee considered the Convention at its business meeting on November 9, 1989, and voted unanimously by voice vote, with a quorum present, to report it favorably to the Senate with a declaration for its advice and consent.

Entry Into Force

This Convention becomes binding on all member nations of the ILO twelve months after they register their formal ratifications with the Director-General of the ILO. As of October 26, 1989, the following nations have ratified this Convention: Australia; Austria; Cyprus; Czechoslovakia; Denmark; El Salvador; Finland; Norway; Sweden; Switzerland; United Kingdom.

Formal Declaration

Article 5(c)(1) of Convention No. 144 calls for consulations on the reexamination of unratified ILO conventions to consider what measures might be taken to promote their ratification. In 1985, representatives for the U.S. Government, the AFL–CIO, and the U.S. Council for International Business reached an agreement on how this review was to be conducted in a tripartite manner. This agreement was set forth as a declaration to the resolution of ratification on Convention No. 144.

During the Committee hearings on ILO Convention No. 160, it was suggested by the private sector witnesses that the Committee should include a declaration identical to the one that was attached to the resolution of ratification on ILO Convention No. 144 (Treaty Doc. 99–20). That declaration restates the ground rules for the tripartite review of all ILO conventions. During the Committee's consideration of ILO Convention No. 160, there was no objection to the inclusion of this declaration in the resolution of ratification and it was adopted unanimously.

Text of Resolution of Ratification

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of a Certified Copy of the Convention (No. 160) Concerning Labor Statistics,

adopted by the International Labor Conference at Geneva on June 25, 1985, subject to the following declaration:

> There is agreement by the U.S. Government agencies concerned, the AFL-CIO, and the U.S. Council for International Business, that each ILO convention will be examined on its merits on a tripartite basis; that if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and that there is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

APPENDIX

EXCERPTS FROM HEARING OF NOVEMBER 1, 1989, ON ILO CONVENTION 160 ON LABOR STATISTICS, TREATY DOC. 101-2

The committee met, pursuant to notice, at 9:59 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Daniel Patrick Moynihan presiding.

Present: Senators Moynihan and Helms.

STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Let me wish a pleasant good morning to our most distinguished guests on this very auspicious occasion. The Committee on Foreign Relations will take up the 10th International Labor Convention that we have ever attended to. And we do so with great expectations.

Last year, as many who were here present will note, we consented to the ratification of conventions 144 and 147, which were the first in 35 years that the United States has ratified in a long history with the ILO, which goes back to 1934, Now we come to a 10th.

We come here on the November 1, which as all here are aware, is the beginning of the Druidic New Year, which was celebrated last night by symbolic human sacrifices. They do not have the good fun like they had in the old days when they actually burned the people in cages, but the pumpkins will do.

And on that happy note, may I welcome our distinguished sometime chairman and ranking minority member, Senator Helms.

Senator HELMS. Thank you, Mr. Chairman, and good morning.

I am delighted to see all three of you, but we have a North Carolinian at that table of whom we are proud and of whom we get prouder every day.

Mr. Chairman, let me commend you. You started this meeting at 2 minutes to 10.

Senator MOYNIHAN. Yes, sir. The North Carolinian, like most North Carolinians, is supposed to be in five different places at 10 sharp.

Senator HELMS. Well, that is so unusual around this place.

Mr. Chairman, it is a pleasure to join you in welcoming Secretary Dole and the other folks.

Your nameplate is not there, sir, but we welcome you.

It is not widely known, but the International Labor Organization was initially established pursuant to the 1919 Treaty of Versailles. It became a specialized agency of the United Nations I believe it was in 1946.

In the past there have been problems with the ILO Convention, which left open the possibility that U.S. labor law would be altered by treaty, and that is something that all of us try to guard against.

That does not appear to be the case with the convention before the committee this morning, but I maintain a concern regarding those treaties that do seek to change our domestic law. And I know you folks feel the same way.

On the face of it, the convention before us is not controversial. If ratified, it would require the United States to collect and compile and publish basic labor statistic in any one of I believe it is nine areas.

The U.S. Government already collects, compiles and publishes statistics in all nine of the areas covered by this convention, and it appears that the ratification of this convention will not require the United States to alter its laws or practices in regards to labor statistics.

I suppose we will be able to confirm that as we go along this morning.

And I thank the Chair, and I again welcome all four of the distinguished guests.

Senator MOYNIHAN. Well, thank you, Senator. And may I say, that is precisely our understanding of this matter in both regards.

Despite the pressure on Secretary Dole, she has very generously agreed to come, although it did not seem probable that she could. We welcome you, Madam Secretary.

We welcome Dr. Norwood; we welcome Mr. Davis and Mr. Freeman.

We will put your statement in the record as if read, and perhaps you could summarize it in the time you have. Perhaps you could give us a little report on your last visit to Geneva. You were in Geneva, were you not?

STATEMENT OF ELIZABETH DOLE, SECRETARY OF LABOR

Secretary DOLE. Yes, I was.

I enjoyed very much the opportunity to participate in the Geneva meeting last June. And I look forward to going back again next June, hopefully with this convention ratified, so that we can inform the convention that this is a fait accompli.

Senator MOYNIHAN. Of course labor statistics are your responsibility in the government.

Secretary DOLE. Yes.

Senator MOYNIHAN. And you have the very distinguished Commissioner, who is alongside you, whose position I believe is older than yours. I think the BLS has been around for more than a century, now, has it not?

Dr. NORWOOD. 105 years.

Senator MOYNIHAN. 105 years. She is nothing if not a statistician. [Laughter.]

Secretary DOLE. Well, I found my meeting at ILO to be a very productive one. I had an opportunity there to visit of course with Mr. Onsin. I met with him again in New York at the United Nations just about 10 days ago, and I also met with the Director Gen-

eral of GATT. And we had an opportunity to visit with the Polish members at that point.

That was very productive to discuss some of the technical aid that we hope to provide, as a safety net for workers in Poland as they move through a difficult transition.

But as Secretary of Labor, it is a privilege, Mr. Chairman, to serve as the chairman of the President's Committee on the ILO, whose overall objective is to formulate and coordinate U.S. policy toward the ILO.

Other members of that committee, as you know, are the Secretaries of State and Commerce, the National Security Advisor, and the presidents of the AFL-CIO and the U.S. Council for International Business.

And of course you know that two of my key advisors here have devoted much time and effort to this convention.

Janet Norwood, as Commissioner of the Department's Bureau of Labor Statistics of course is responsible for the statistical activities covered by Convention 160. The BLS staff has participated very actively in the drafting of the convention.

And then Bob Davis is solicitor of the Department of Labor, and he chairs the Tripartite Advisory Panel on International Labor Standards. And they were hard at work in Geneva as well. And we look forward to presenting to you, at some future time, the product of their meetings this last June.

Senator MOYNIHAN. Well, we would like to have a hearing and do that. When you are ready, Mr. Davis, or Secretary Dole, you let us know.

Mr. DAVIS. Yes, sir.

Senator MOYNIHAN. We would like to do more than just start these things up; we would like to hear what goes on.

Secretary DOLE. What I would like to do, just very briefly, is to say that you have already mentioned the fact that the ratification of Conventions 144 and 147 in 1988, ended the 35 years of inaction in this area. And until then, I think the old fears still lingered that through the treatymaking power of the President and the Senate and the bypassing of normal legislative procedures in the process, we might undermine our own domestic labor law. And the President's Committee on ILO took two actions to respond to that concern.

First, in 1980, the committee established TAPILS, the panel of legal experts that Bob Davis chairs, with the mission of providing full legal analysis of selected ILO conventions from the perspectives of business, labor, and government.

This process was first used by the tripartite advisory panel in analyzing Conventions 144 and 147. As you know, the panel found no legal impediments to ratification, and in 1988, after a detailed review of Convention 160, it found that U.S. law and practice are in full compliance with this technical convention.

Now, the second action of the President's committee was a 1985 tripartite agreement which established that in considering future ratifications of ILO conventions, neither the committee nor its members intend to use ratification of ILO conventions to change domestic labor law.

As you are well aware and as you have stated this morning, our ILO ratification record is very poor, indeed. Today the United States has ratified only 9 of the 169 conventions adopted by the ILO.

As you, Mr. Chairman, and Senator Hatch have consistently stated, we have got to improve that record if we are to play a leadership role in the ILO.

And I want to be clear on one point. Such a leadership role will be utilized to advocate our strong support for the ILO's substantial human rights activities, as well as its technical programs in the area of employment and training.

The ILO is the world's only tripartite, international organization. Further, it is a body in which governments not only meet as equal partners with workers and employers, but also jointly draft, adopt, and supervise the implementation of international labor standards.

Most of these standards are technical instruments, like Convention 160, which deal with various issues related to employment, social security, safety and health, conditions of work, and so on. But some enshrine fundamental human rights, such as freedom of association.

Given its tripartite structure and its long-established machinery for supervising the application of ILO standards, it is not surprising the International Labor Organization is the United Nations most effective advocate of human rights.

We are all aware, for example, of the ILO's courageous support of Solidarity during the darkest days, and the critical role it has played in Poland's historic journey to democracy.

But our ratification record works against our participation in the ILO's activities precisely in this critical area. And that is a point I would like to leave you with this morning, Mr. Chairman. It is something I feel strongly about.

Although we are a strong advocate of the ILO's standardsetting activities and a leading critic of violations of fundamental worker rights, our poor ratification record does raise questions about the sincerity of our efforts.

Our failure to ratify ILO standards subjects us to criticism that we do not practice what we preach. And moreover, it also prohibits us from bringing complaints against other countries for failure to observe standards they have ratified.

Let me just close with this comment. Beneath the foundation stone of the former ILO headquarters in Geneva lies a document on which is written, "If you desire peace, cultivate justice."

By taking steps that will allow the United States to play a leadership role in the ILO, we help the ILO achieve its mandate of creating more jobs, better jobs, and a climate of sound industrial relations based on full respect for human rights and freedoms.

Thus, we can indeed cultivate justice and advance the cause of peace.

I thank you, Mr. Chairman, for allowing me to make this statement.

We have two who are going to testify now on the technical details of Convention 160, and I look forward, hopefully, to seeing you again in the not too distant future with further efforts that we might undertake together in this important arena.

[The prepared statement of Secretary Dole appears in the appendix.]

Senator MOYNIHAN. We thank you so much, Secretary Dole, and I do not think we could underestimate the role that the ILO played in the support of Solidarity during those dark years in the middle of this decade.

The simple fact is that the Polish Government had ratified the Freedom of Association Convention, and they were bound by it, whether they chose or not, and a tripartite association such as the ILO was able to say to them, you cannot destroy Solidarity. Let us hear more about it. I am sure we will. The ILO has made one of the largest statements about human rights, political rights, economic rights in Poland.

We are now in our 55th year of membership in the ILO. That is a long time, Mr. Chairman. Would you not agree that there are not many such institutions. Not many countries have even been around 55 years, much less organizations. The ILO will now be in its 70th year.

Madam Secretary, we do so very much appreciate your courtesy in coming by. We know you have to be elsewhere. You have an aide over there who is giving you all sorts of body language suggesting that you have to go.

Secretary DOLE. Thank you very much.

Senator HELMS. Before you go, is there any truth to the rumor that you have met with a certain Senator in Groton, CT, a couple of weekends ago?

Secretary DOLE. Yes, it is. That is right. You know, I sort of tend to forget his name because I do not see much of him these days. But it was wonderful. We even had a chance to have lunch together. Can you believe it?

Senator HELMS. You swung a bottle at something or somebody, too.

Senator MOYNIHAN. Now, there is no need to get into that. [Laughter.]

Secretary DOLE. This was the commissioning. I did the bottle-breaking back about a year and a half ago, and now they are out to sea. Thank you. [Laughter.]

Senator MOYNIHAN. Now, we have the pleasure of hearing from Dr. Janet Norwood, who is the distinguished Commissioner of the 105-year-old Bureau of Labor Statistics. Dr. Norwood, we welcome you. It is not often that we have an opportunity to hear from the Commissioner of Labor Statistics at the Committee on Foreign Relations, so you are doubly welcome.

I will put your statement in the record as if read, and you may proceed exactly as you wish.

STATEMENT OF DR. JANET NORWOOD, COMMISSIONER, BUREAU OF LABOR STATISTICS

Dr. NORWOOD. Thank you very much, Mr. Chairman. I am, of course, very pleased to be here as you consider ILO Convention 160.

The convention really is designed to motivate all countries to adopt a comprehensive program of labor statistics. It has really

become increasingly clear that labor market information is critically important for economic decisions by policymakers and private companies for understanding of social trends and that comparable data across countries is important to the functioning of markets in an increasingly internationalized world.

The BLS has a long history of producing information for these purposes. Our programs today and for many years currently meet or surpass the requirements of the convention before you in all nine subject areas. We give careful consideration to our standards and guidelines in developing our programs, and we have been active participants in the ILO-sponsored conferences that formulate these guidelines.

One of the Bureau's important initiatives in the international area is the development of reliable and comparable information across countries that can be used to assess U.S. performance relative to other countries and to evaluate our competitive position. Wherever possible, we adjust the statistics published by foreign countries and by international statistical agencies for consistency to U.S. concepts and definitions.

Our work on international comparisons of unemployment began more than a quarter of a century ago when the President's committee to appraise employment/unemployment statistics, the Gordon Commission, asked BLS to evaluate the contribution of measurement differences to the differences in unemployment rates between the United States and other countries.

Our program of comparing unemployment-related labor market variables among countries is quite well known. In fact, we are considered the leaders in this area. The European communities, the Organization for Economic Cooperation and Development have requested our assistance in developing comparisons that are standardized across countries. So, we have received a great deal of recognition in this area, and more recently we have been cooperating with the ILO in its research program to develop more comparable measures of unemployment worldwide.

Obviously there have been a lot of changes in the quarter of a century since we have been doing that, and we recognize that comparisons among countries cannot be restricted to statistics alone. We know, for example, that serious structural problems of unemployment exist in the United States in spite of the fact that the overall jobless rate is 5 percent.

Jobless rates for our minority population for those in some of our urban areas remain uncomfortably high. At the same time, we need to recognize the differences in policy approach and demographic structure that account for the relatively low unemployment rates in Sweden and Japan. There are a lot of reasons for that, and many of them are described in my testimony. I will not go over them here, but those kinds of illustrations and examples, I think, show the complexity of developing comparable statistics across nations.

One of the Bureau's current research efforts is directed toward developing a series of comparative unemployment measures ranging from relatively narrow measures—that is, the long-term unemployed—to broader measures that encompass economic, part-time, and discouraged workers.

This research should improve our understanding of the labor market situation across countries with different policies and practices in dealing with unemployment.

One difficult issue that we would like to see addressed by the wider statistical community is international comparisons of poverty and living standards. In its latest release on the numbers of persons in poverty, the Census Bureau provided a number of alternative approaches to measurement and a number of scholars have raised questions about the consumption data that forms the underlying basis for our official definition of "poverty."

Senator MOYNIHAN. Let me see if I can get it straight. That is CPI-U-X1? Did I get it?

Dr. NORWOOD. That is correct. That is one of the adjustments.

The more basic issue, it seems to me, is the consumption data that underlie the basic definition of "poverty" which was designed as you all know in 1969.

Senator MOYNIHAN. Well, as you know, Molly Oshanski just took the city workers, whatever, and multiplied by 3. And somebody said why did you not multiply by 2.8 or 3.2 and the answer would have been 3 is easier.

Dr. NORWOOD. Our data today show that that figure, the proportion of food consumption is now not one-third but 14.7 percent. So, it is out of date.

And one can raise a question about whether that is the way to look at it in any case.

Senator MOYNIHAN. Exactly.

Dr. NORWOOD. My point, however, is difficult as that issue is in one country, imagine the problems of comparability across countries. Although many countries prepare national poverty statistics, the definitions and methods vary greatly from one country to another. There is also considerable diversity in conceptual approach.

We are currently involved in a Luxembourg income study project which is developing a data base that will permit comparisons across countries.

Senator MOYNIHAN. A former colleague of mine, Lee Rainwater, is now a director of BLS. How are we involved in this?

Dr. NORWOOD. We have been participating. Members of my staff have cooperated in developing ways to look at a data base, to put our data into the data base so that they would be comparable, to make adjustments for comparability, protecting always the confidentiality of the data, and several members of my staff have been involved in developing studies across countries looking at the elderly, the poor, children, and how they differ among countries. There are some very interesting results that are beginning to come out of that study.

I think that the important thing is that ILO 160 is an effort to get countries to developing the building blocks that are necessary for this kind of comparative work.

The ILO Convention also provides for a system of comparable wage and earnings data, and this I believe is an analytical area of increasing importance in this country as well as in the rest of the world. Methods used by employers to compensate workers for their performance on the job are shifting a great deal in this country reflecting the changing needs of both management and labor. Innova-

tive benefit packages with flexible options are emerging, and the use of profitsharing programs and lump sum payments has increased.

Much more work needs to be done internationally if we are to be in a position to understand these changes that will affect countries in different ways in the future. These kinds of data are important inputs to the BLS work on comparing productivity, unit labor costs, and hourly compensation costs.

These are the kinds of things that highlight some of the problems in comparing nonmarket or controlled economies to free market-oriented ones. The development of a data base of price data containing prices established by—this is of particular importance right now, of course, with Eastern Europe—but to combine in some way prices that are established by central authority in a controlled economy with the black market price that exists currently and in the future as many of these enterprises are privatized to find ways to combine the differences in prices to work toward a market-oriented price system is extremely important.

We do not know, for example, enough about how to compare or how to treat shortages in a nonmarket economy. In the United States if an item is in short supply, the price goes up. In a controlled economy if an item is in short supply, it is not available, the price remains the same. So, we have got to be very careful in making price comparisons, and we have got to see to it that there are similar kinds of concepts that are understood by all countries.

The BLS program of technical assistance and consultation with other programs and with the ILO can be helpful in handling some of these issues. Our Bureau frequently conducts seminars on such subjects as methods of collection, survey management design, analysis, dissemination of statistical information. Bureau staff as well as persons representing our countries benefit from the exchange of ideas and problems. In fact, today we have 52 people from other countries, many of them developing countries, at the BLS going through some of our seminars.

The importance of this work as well as the underlying purpose of the ILO Convention and this hearing is underscored, I believe, by current developments in Eastern Europe. The efforts of the Governments of Poland and Hungary to move toward freeing their markets from government control and their desire to encourage private investment underscores the need for statistics that are accurate, objective, and relevant.

We at BLS have been giving a great deal of thought to the kind of data base that might be needed by these countries as we participate in conjunction with other parts of the Department of Labor in developing a useful response to their requests for technical assistance.

In summary, Mr. Chairman, I believe that ILO Convention 160 provides a sound foundation for the United States and for other ILO members in carrying out these tasks. I hope the Senate will advise the President to ratify it.

I would be glad to answer any questions you have.

[The prepared statement of Dr. Norwood appears in the appendix.]

Senator MOYNIHAN. We thank you very much, Madam Commissioner. I think probably it would be helpful to hear Mr. Freeman and of course Mr. Davis can offer thoughts, and then we can have a kind of general discussion, but might I just emphasize your point?

About a month ago, Secretary of State Baker appeared before the Finance Committee to discuss Soviet-American economic relations. It happens that I had to Chair the latter part of the meeting.

The question arose about the size of the Soviet economy compared to others. The Secretary volunteered that he did not think the Soviets were the second largest economy in the world, or even the third. He was not sure of that at all.

Later, in a discussion—it was not a private discussion, just an informal discussion in the committee room—he allowed that they might be seventh, if you use the real exchange value of the ruble. That was interesting.

The following week, the Central Intelligence Agency produced its 40th annual assessment of the world economic order and there was the United States as No. 1 and the Soviet Union as No. 2, and so on either side of the Potomac there are radically different notions about the size of the Soviet economy.

If you think of the world being run by metaphor, if we are 1 and they are 2, well then, that makes for a good bipolar world—bipolar military alliances and that sort of thing. But if it turns out that they are No. 7 and we are No. 2, then it is not very clear what the nature of world conflict is going to be like.

Mr. Freeman it is very thoughtful of you to be here this morning. We certainly welcome you and we will take your testimony in any way that you prefer. Do you have a written statement, sir?

Mr. FREEMAN. Yes, sir. We presented a statement to you.

Senator MOYNIHAN. We will put it in the record as if read. You may summarize it or read it, as you choose.

STATEMENT OF ANTHONY G. FREEMAN, SPECIAL ASSISTANT TO THE SECRETARY OF STATE AND COORDINATOR FOR INTERNATIONAL LABOR AFFAIRS, DEPARTMENT OF STATE

Mr. FREEMAN. I appreciate the opportunity to testify in support of this convention. I will not read the testimony, but if I may I would like to summarize it.

Senator MOYNIHAN. Yes.

Mr. FREEMAN. This statement which we have presented to you places the question of ratification of this convention in the larger context of the policy approach which the executive branch has been pursuing since 1985.

In 1985, encouraged by the Senate Labor Committee, we committed ourselves to a good faith effort to review systematically and to determine the ratifiability of the ILO conventions. As has been stated earlier, this undertaking reversed a 35-year history of neglect by the United States in the matter of ILO conventions, a neglect which poorly served the cause of promoting international labor standards that protect working people around the globe and which have the additional effect of undermining U.S. influence in the ILO.

The Department of State believes that this undertaking is essential to our goal of promoting international respect for the ILO's unique standardsetting and supervisory functions and of preserving U.S. influence in this international organization.

Since the adoption of this policy approach the United States, with the advice and consent of the Senate, ratified ILO Conventions 144 and 147 in 1988. In addition, as Secretary Dole has just testified, review of an important human rights standard—Convention 105 on the abolition of forced labor—is far advanced.

The convention before you, which is No. 160 on labor statistics, is a straightforward technical convention that will assist government and private industry by enhancing the availability of comparable economic data on a global basis.

The United States is already in compliance with the requirements of this convention. Ratification would require neither the enactment of any additional legislation nor any changes, additions, or adjustments to our existing statistical gathering procedures.

Mr. Chairman, it is in the foreign policy interests of the United States to ratify Convention 160 both to advance the convention's important technical goals in the world economy and to help preserve U.S. influence in the ILO by demonstrating the earnestness of our commitment to ratify ILO conventions that are consistent with U.S. law.

To keep up the momentum of the approach which we adopted in 1985, we urge the Senate to provide its advice and consent to ratification of ILO Convention 160 in an expeditious manner.

I thank you.

[The statement of Mr. Freeman appears in the appendix.]

Senator MOYNIHAN. Thank you, Mr. Freeman. Mr. Davis, would you like to comment on any of these matters? You are here as Solicitor of Labor, of course, an old and honorable position.

As you and three other people know, I wrote my dissertation on how the United States came to join the ILO. It was your predecessor, Judge Weizansky, who did me the great service in 1935 of collecting all of the documents that were involved, so they were all in one little book.

It would have taken me a year to find them in the Archives, but he thought somebody would need them one day. We welcome you in that right honorable succession.

STATEMENT OF ROBERT P. DAVIS, SOLICITOR OF LABOR

Mr. DAVIS. Mr. Chairman, thank you very much. Not only being aware of your academic achievement in matters pertaining to the ILO but frankly listening to your exchange with Commissioner Norwood about exotica of economic measurement I am a bit intimidated by the prospect of rising to that level of sophistication. But I am sure that the Commissioner can continue on those matters.

Senator MOYNIHAN. You are not here to be an ambassador, Mr. Davis. You can say anything you want. [Laughter.]

Mr. DAVIS. Mr. Chairman, there are three groundrules that we apply in evaluating proposed conventions, and those have been indeed applied in Convention 160 and I would like to restate them

here very briefly because they are so important and they govern our means of operation approaching the ILO.

First, as, if you will, the standards for evaluating conventions, we must determine that each ILO convention stands on its own. We examine it on its merits on a tripartite basis.

Second, if there is any difference between Federal law and practice and the subject convention, that difference must be resolved in the normal legislative process.

Third and finally, there is no intention on our part in approaching ILO matters to change State law and practice by Federal action through ratification.

We have completed the legal review on that basis for Convention 160 and, Mr. Chairman, I commend the convention if only on that basis. Certainly, Dr. Norwood has pointed out many other bases for favorable consideration but can certify that the convention does stand in compliance with those three basic principles that were laid out 4 years ago governing ILO conventions.

Senator MOYNIHAN. That is very helpful to us and let me be clear, if I can. What you are reporting is the judgment of the Tripartite Advisory Panel on International Labor Standards. Do I have it right, Mr. Freeman?

That is part of the review of our involvement in these matters that took place at mid-decade. It was decided to set up this mechanism which could address the questions which had hovered around the subject and which led effectively to our withdrawal from the conventionmaking process.

So, now we have a system in place in which a tripartite group looks at these conventions and asks specific questions. Mr. Davis, you addressed three questions, and you said the answer is "Yes" to each of the three, or on three criteria you have satisfied yourself?

Mr. DAVIS. Absolutely. Mr. Chairman, if I could just take this moment to draw your attention and the committee's attention to the two other coordinate parts of the tripartite process, using the ILO parlance, the worker community is represented by Edward Hickey on behalf of the AFL-CIO. Mr. Hickey is really the dean of the group, having attended to ILO matters since the early 1960's.

Second, Mr. Edward Potter, representing the employer community and you are going to hear from Mr. Potter on a separate panel, but I really stand here as the legal officer not only for the Department of Labor but also as the chairman of that group, and frankly we could not have gotten here without the very good work of Mr. Hickey and Mr. Potter and their cooperation in the process.

Senator MOYNIHAN. Indeed. I see every reason for going forward with this, and I think the committee will. It is one of the ironies of our development as an economy that the United States at the very time when its political culture, if you want to use a big word like that, was vigorously opposed to anything that smacked of economic planning or Government intervention, at the same time developed a set of economic statistics which made economic planning possible.

It created the Bureau of Labor Statistics, which has always had as much or more support from the business community as it has from the labor community. There was scarcely a labor movement then.

The labor movement did not really exist when the BLS began, although what labor movement there was tried to get the Government to produce some statistics on minimum living standards so that they could bargain against that for the worker's family budget, and that is what you have been doing for so long and so well.

You now have a situation where there are 700,419 books on how you move from a free enterprise economy to a planned economy, but there is not one on how you move the other way. Someone is going to have to write that book are they not, somehow or other?

The Hungarians and the Poles are going to need these economic statistics at a minimum.

Dr. NORWOOD. We have been giving a great deal of thought to those issues. It is quite clear that we do not want to be in a situation where we are advising other countries merely to adopt what has worked in our society.

There are special needs, during a transition period. Perhaps the most important long-range need for many of these countries, I think, is to establish a system that is credible and that is free from political control.

That will clearly take some time, and in some cases the statistical agency is also the auditing agency and there is a kind of conflict of interest, but we have been examining, in particular, the situation in Poland. The Department has received members of the Solidarity group from parliament and elsewhere, and we have had an opportunity to discuss some of the issues with them.

It seems clear to us and to them that their big problem is inflation. It seems clear to me also that the development of accurate price data in a controlled economy is extraordinarily difficult, but particularly important for two reasons.

One is because they will have to make decisions about which enterprises are productive and which are not, and if the prices are set in a way that does not really reflect reality those decisions could be made incorrectly.

But second, because as we read in the newspapers and from our discussion with the Poles, it seems clear that inflation is one of the big issues. As Solidarity is, after all, a labor-based government, it seems to me that it is going to have to pay a great deal of attention, as any government should, to the welfare of the people in Poland as they shift from a controlled to a free, or market-oriented economy.

So, conditions of the characteristics of the workers, the ability of workers to shift from one enterprise to another, as well as some kind of information on how families adjust to a problem of withdrawal of subsidy of food and housing; for example, in their expenditures and their standard of living is going to be a very difficult problem for the future.

Senator MOYNIHAN. Yes. Help me, here. You remember things like this and I do not. Was it Von Mieses or Von Hayak who wrote in the 1920's that these systems would not work because they had no price mechanism?

Dr. NORWOOD. I do not remember which one.

Senator MOYNIHAN. I think it was Von Mieses.

Dr. NORWOOD. Probably.

Senator MOYNIHAN. They just do not know what anything is worth and they do not know how to find out. They have other problems. They are their problems not ours, but they become ours if we become involved. They have hidden unemployment. Officially they have no unemployment, yet obviously they do have unemployment, and how do you measure what is not allowed.

Dr. NORWOOD. I was in Hungary a few years ago and was rather surprised when I walked into a grocery store or supermarket in the middle of the day and it was packed with people, and I asked the head of the statistical agency how those people could be doing their shopping in the middle of the afternoon if they were employed, because there was not really any unemployment, they had told us.

Well, they passed that off, but about a year later I saw the same head of the statistical agency who indicated that, well, that was their whole problem, that they had everyone out of work, but very, very severe underemployment and very, very low productivity.

The Hungarians are now trying to shift; probably in their statistical system, they may be a bit ahead of the Poles, but I think they both have the foundations. And we are cooperating with the ILO as well in looking toward what kind of help can be given to both of those countries.

We have also had some discussions, interestingly, with the Soviet Union, which has indicated a very great interest in working with us in the price area.

Senator MOYNIHAN. I hereby make a prediction that the Hungarians will figure out how to run their statistical department.

Dr. NORWOOD. Yes, I think so.

Senator MOYNIHAN. They have a record of that sort of thing.

As a matter of fact, it is rather fascinating how these things endure. One-half of modern physics begins in Budapest on the standardized world test for 17 year olds, the Hungarians rank third. The English rank second; that is where the other one-half of physics came from. How it comes that Hong Kong ranks first, I do not know. We rank 17th.

Dr. NORWOOD. Of course, as you know, a lot of important statistical developments were originated in the Soviet Union and in other countries of Eastern Europe. So, there is a good background there, without any doubt, and the skills are there.

Senator MOYNIHAN. Yes.

I have a question which does not really trouble me, but we are going to try to hold some hearings on it. Let us get it straight. The CIA thinks the Soviet Union is the second largest economy in the world. The Secretary of State thinks it may be the seventh largest.

Well, there is a difference there. How do you close in on that? Obviously it is not a doctrinal thing over in Langley. Their economic model keeps producing No. 2, when it is perfectly clear that the Japanese have a larger economy.

How are we going to watch our relationship with the EEC in 1992? They are barely behind us in GNP now, and they are growing faster.

Dr. NORWOOD. They are. Of course that was the whole purpose of the development of the European Community, to improve their possibilities of growth. We have been looking at issues relating to unemployment and to employment growth, and the demographic

changes and comparisons between the European Community countries and the United States.

There are some vast differences that are really quite interesting. Their demographic shifts are going to make it a little bit harder for them; ours are going to make it a little bit easier for us to maintain a little bit lower unemployment.

They have not yet had the big, massive increase of women in the labor market, for example.

Senator MOYNIHAN. They have not?

Dr. NORWOOD. They are beginning to have it. But countries like Italy, for example, have not.

Sweden, of course, has a much higher labor force participation rate for women than we do.

The minority situation is somewhat different.

You well recall, I am sure, the guest worker syndrome of importing labor and then exporting labor in a time of recession. The European countries are now facing the fact that these people have stayed and they have had children. And they have a minority situation that in some ways is similar to ours, although it has started in a different way.

There are very many contrasts, but there are also a number of interesting similarities.

Senator MOYNIHAN. If you project their saving rates and our saving rates, by the year 2000 the United States could very easily be the second largest economic unit in the world. Would you not think that was in the range of possibility?

Dr. NORWOOD. We certainly are not doing very well in savings; that is very clear. We are a consuming country.

Senator MOYNIHAN. That might come as a bit of a surprise. Senator Helms has very properly raised a number of questions for Secretary Dole, who had to leave, of course. I am going to ask just two of these to Mr. Davis. And I will give you the whole list and would ask that you give us a reply in writing at your convenience.

Mr. DAVIS. Absolutely.

Senator MOYNIHAN. First he asks Secretary Dole, for the record, will this convention alter any U.S. labor laws or regulatory practices?

Now, you have answered that previously, but answer it again if you would.

Mr. DAVIS. Senator, the direct answer to the question posed is "No." There will be no such alteration.

Senator MOYNIHAN. And now a more difficult one, because there is no easy way to give a precise answer. The Western world and the Soviet bloc have vastly different labor and human rights practices. And Senator Helms' second question is, Does the ILO still apply a double standard with regard to labor and human rights violations in the Soviet bloc?

Mr. DAVIS. Senator, Mr. Freeman from the State Department may have some thoughts on that. That is a very important question and one that we have focused on.

I really would prefer, if I could, to submit a written answer on that.

Senator MOYNIHAN. Certainly, a written answer will be fine.

[The information referred to follows:]

Question. Secretary Dole, for the record, will this convention alter any U.S. labor laws or regulatory practices?

Answer. The extensive legal review of ILO Convention 160 by the Tripartite Advisory Panel on International Labor Standards (TAPILS) of the President's Committee on the ILO revealed that the United States is in full compliance with the provisions of the convention. Therefore, ratification would not require any change to U.S. laws, regulations, or practices in the field of labor statistics.

Moreover, it is important to bear in mind that Convention 160 is a non-self-executing treaty; i.e., the terms of the convention impose obligations intended to be discharged through legislative action. Accordingly, in the absence of implementing legislation. Convention 160 would not be effective as U.S. law. However, because existing U.S. laws and regulations are already in full compliance with Convention 160, ratification would not require the enactment of any additional implementing legislation.

Question. The Western world and the Soviet bloc have vastly different labor and human rights practices: Does the ILO still apply a double standard with regard to labor and human rights violations in the Soviet bloc; what can be done to assure that the standard applied by the ILO to the United States is the same as the standard applied to Communist countries?

Answer. While the double standard was a major issue in the ILO from the mid-1950's to the early 1980's, this is no longer the case. Although the double standard has not been totally eliminated, the ILO has been more effective in criticizing Communist violations in recent years. Still, the U.S. Government's top objective for the ILO is to further preserve and strengthen the ILO's unique machinery for the supervision of international labor standards. We are therefore constantly alert to any possibility of backsliding in this area.

Throughout the 1960's and 1970's the Soviet Union and Eastern Europe enjoyed virtual immunity from the ILO's supervisory machinery, despite glaring violations of the fundamental labor and human rights conventions they had freely ratified. In fact, when the ILO Conference Committee on the Application of Conventions and Recommendations (CACR) cited the U.S.S.R. and Czechoslovakia in 1974 and 1977 for violating ratified human rights conventions, the Soviets successfully defeated the committee's report in the conference plenary. This was a primary reason for U.S. withdrawal from the ILO in 1977.

The United States returned to the ILO in 1980 because, among other things, there had been significant progress in eliminating this double standard. In 1983, the United States and its allies succeeded in thwarting another Soviet attempt to defeat a CACR report criticizing Communist violations. From that point on, the Soviets have never again been able to muster enough support to reintroduce the double standard.

Two examples:

1. In 1984, although the Soviets railed against what they considered an inappropriate intrusion into Polish national affairs, the ILO Governing Body overwhelmingly approved the report of an independent Commission of Inquiry highly critical of Polish efforts to crush the Solidarity trade union. The Commission's report called on the Polish Government to recognize and legalize Solidarity—finally accomplished in April 1989.

2. In the mid-1980's, in an effort to avoid further ILO criticism of its human rights violations, the Soviets began to attack and attempt to undermine the supervisory machinery. However, Western and Third World ILO members so effectively resisted Soviet efforts to discredit the supervisory machinery that the Soviets were forced to abandon this strategy.

More recently, the U.S.S.R. and Eastern Europe have begun to accept and, in one case, to actively support ILO supervision even when other Eastern European countries are involved. In June 1989, during the most recent ILO conference, the ILO examined serious charges of employment discrimination in Romania. Whereas in years past the U.S.S.R. and its allies would have vociferously defended Romania, this year—for the first time—one Eastern European country, Hungary, joined in strongly denouncing Romanian Government policies. The Soviet Union and other Eastern European countries conspicuously made no effort to prevent ILO censure of Romania.

On the second point, we can be fairly certain that the United States will be measured by the same yardstick as other ILO members since, as noted above, the Soviets no longer enjoy immunity from the ILO's supervisory machinery. In pursuance of our key U.S. Government objective for the ILO, we maintain continuous dialog (on a tripartite basis) with other delegations to the ILO Governing Body and June confer-

ence, as well as with the ILO staff responsible for the supervisory machinery, to ensure that ILO supervision remains objective and impartial.

Question. I seem to recall that one of the reasons the United States withdrew from the ILO in 1977 was because the organization had been exploited by the PLO: in light of the fact that the PLO has, in recent months, attempted to join both UNESCO and the WHO, do we expect any efforts by the PLO to exploit the ILO?

Answer. As you may know, the PLO was expected to apply for full member status in the ILO last spring, in the wake of its bid for full membership in the WHO (which voted to defer that question until next year). However, the PLO application to the ILO never materialized.

While we are not currently faced with an application for full PLO membership, it should nevertheless be noted that both the unique tripartite structure and procedural rules of the ILO make the likelihood of success of any such PLO attempt doubtful (a fact which most certainly figured in their decision not to submit their application last spring). In particular, in contrast to the simple majority vote required by the WHO, a two-thirds majority record vote of the tripartite Conference is required to achieve membership in the ILO.

Question. Over the past few years, I have worked on a case regarding Scott Nelson, a North Carolina resident who was beaten while employed in Saudi Arabia: Do labor practices in Saudi Arabia suggest that what occurred to Mr. Nelson is common, or simply an isolated event; what actions should the United States take to assure that citizens employed overseas are protected, treated fairly, and appropriately compensated for injuries?

Answer. Mr. Nelson's experiences, including allegations of mistreatment by Saudi officials, are not representative of those of the vast majority of workers in Saudi Arabia, including America expatriates.

The U.S. does take measures to protect and ensure the welfare of U.S. citizens abroad, including: the Department of State issues travel advisories to alert travelers to adverse conditions abroad which could pose a threat to personal safety; the Department of State has several brochures which aid the traveler prepare for a trip abroad; i.e., "Tips for Travelers to the Middle East and North Africa," "Your Trip Abroad," and "A Safe Trip Abroad"; our Embassies encourage American citizens who allege mistreatment, or have any kind of difficulties to contact the Embassy for assistance; and where an American seeks legal compensation abroad for alleged injury, the U.S. Embassy cannot represent that individual in those legal proceedings, but can provide the individual with a list of attorneys.

Questions. Different countries have different methods of collecting and compiling labor statistics. How will the ILO assure that the data submitted from its members is accurate and suitable for comparison to U.S. statistics?

Answer. ILO Convention 160 is designed to motivate all countries to adopt a comprehensive program of labor statistics. Article 2 of the convention provides that when designing or revising the concepts, definitions and methodology used in the collection, compilations, and publication of these statistics, ratifying member countries shall take into consideration the latest standards and guidelines established under the auspices of the ILO. The ILO's statistical bureau reviews the data submitted, and makes adjustments for consistency where appropriate. The U.S. Bureau of Labor Statistics also adjusts statistics for many foreign countries to U.S. concepts where necessary and feasible.

Senator MOYNIHAN. Mr. Freeman.

Mr. FREEMAN. Well, this has been a concern in the past, Senator. But we think that the ILO has been doing a good job, in terms of recent years, particularly since our return to the ILO. And of course that has been one of the major areas that we have been monitoring since our return.

I would cite to you the fact, as Secretary Dole has already, that the 1984 Commission of Inquiry Report on Poland was a major statement by an international organization about the lack of freedom of association in Poland at that time. And this was pressure by the international community on the Poles to correct that.

Also, I would cite the statements of the Committee of Experts on the Soviet Union. There have been critical comments by the Committee of Experts every year in their annual report with regard to less than satisfactory freedom of association in that country.

They cite Article Six of the Constitution of the Soviet Union that the Communist Party plays a leading role in all aspects of society, including the trade union movement and the trade union area.

There was a period when we would have liked to have seen that pursued more energetically, followed up in discussion by the Freedom of Association Committee and by the Committee of Application on Conventions and Standards and the conference.

So, there has been some movement in the Soviet Union in recent months, with regard to the appearance of new organizations, that are certainly not well developed yet, but which give the appearance of being outside the framework of the official labor structure of that country.

I have just come back from the Soviet Union and for example there are strike committees that have been developed in the mines, which have one foot in the official structure and one foot out of the official structure.

There also are independent labor bodies that are developing in Lithuania and Estonia and Latvia and in the Ukraine, which are outside the official structure of the Soviet Union.

So, this is not a time for us to be talking about double standards, with regard to the Soviet Union and the ILO, I would say. There are developments that we are monitoring and the ILO is monitoring very carefully as well.

There is a governing body session coming up very soon this month, in which there will be discussions regarding Rumania and Nicaragua. So, I think that we are satisfied. Generally, I would have to say we are satisfied that this question of double standards has been less and less important.

Dr. NORWOOD. Senator, if I might just add, I think one of the real benefits of the ILO, which is not sufficiently publicized, is the cooperation between East and West in technical areas.

I participated in the ILO's International Conference of Labor Statisticians. In fact, 5 years ago or so, I chaired that conference. And on issues relating to definitions of "unemployment," which indeed get into the area of human rights, we found that we had great support from the Soviets, from the Hungarians, and many of the others.

So, there was a lack of political reaction in the technical area, and I think that is very important.

Senator MOYNIHAN. Well, good. I think it is the case, and of course Senator Helms, that when things got out of hand, as we felt in the ILO, we said if you do not watch what we are doing we are going to leave. As a matter of fact, I wrote the letter. And they did not, and then we left. I handled that on the floor.

And when the time came that we thought it was time to come back, we came back.

I think, Mr. Freeman, you seem to feel that that has been of some consequence.

Mr. FREEMAN. I believe there has been improvement in this area. We are always looking for further improvement, of course, I would have to add, as well.

Senator MOYNIHAN. I would appreciate it if, for our written record which will be on the Senators' desk when this matter comes to the floor, as I think it will, we might have a copy of that 1984

memorial that you mentioned concerning Poland. I would like to make that an appendix. And then some excerpts from the Experts Committee with respect to the Soviet Union.

Mr. FREEMAN. Yes, sir.

Senator MOYNIHAN. Just so we can use those as examples of what we are talking about, as an appendix to our report.

[The information referred to may be found in the appendix.]

Senator MOYNIHAN. With that, we thank you very much.

Mr. Davis, I am going to give you the full set of questions from Senator Helms for Secretary Dole.

Thank you, Dr. Norwood, for coming. It is a very special occasion for us to have the Commissioner of Labor Statistics before us, although we do note that it was the Commissioner, Royal Meeker, your predecessor, 94 times removed, who helped arrange for the first International Labor conference, which was held down at the Pan-American Building in 1919.

Dr. NORWOOD. That is right.

Senator MOYNIHAN. And the offices were provided by Franklin D. Roosevelt, who was Assistant Secretary of the Navy.

This is an episode which is still not in any of his biographies. He cleaned out the temporary Navy buildings on the Mall and installed Harold Butler in what became the International Labor Office, and it was his first involvement with international organizations, and one of his first initiatives when he became President was to move to join the ILO.

Again, thank you all very much.

We have now an arrangement which is not satisfactory which is that we have a labor witness and then we have a business panel. I think we should have you all up at once.

Mr. Oswald, come up here, and Mr. Brian Glade, and Mr. Potter. I think we ought to do this panel together in the tripartite spirit of the day. Rudy Oswald is, of course, the research director in the area of international affairs for the AFL-CIO. Mr. Brian Glade is director of international affairs of the U.S. Council for International Business, and Mr. Potter is counsel to the U.S. Council for International Business. And I see we have Mr. Lunnie. Good morning, sir, and you are with?

Mr. LUNNIE. I am with the National Association of Manufacturers.

Senator MOYNIHAN. Shall we just go forward, then, in exactly that

Mr. Oswald, if you would begin. You have heard some of the concerns. My question for the panel is, Do you think it is in the interests of the United States that the Senate give its advice and consent to ratification of this convention? If you wish to elaborate, we would appreciate that. Mr. Oswald, good morning, if you would begin, sir.

STATEMENT OF RUDY OSWALD, RESEARCH DIRECTOR, INTERNATIONAL AFFAIRS, AFL-CIO

Mr. OSWALD. Thank you, Senator. I am happy to be here to represent the AFL-CIO policies and positions on this question. I would

like to ask that my written testimony be incorporated in the record.

Senator MOYNIHAN. It will be included in the record as if read. Please proceed exactly as you think best.

Mr. OSWALD. I participated in 1984 and 1985 in the Convention No. 160. It was an updating of the convention that had been adopted in the 1920's as one of the earlier conventions of the ILO on labor statistics.

As you had heard earlier, the standards that are adopted in this convention are surpassed by the United States in its own collection of statistical data by the Bureau of Labor Statistics.

There are a number of recommendations, and the real advantage of the convention is that it will allow international comparisons of labor statistics to be made much easier than if one does not have a standard that we adopt in comparison with others.

The other element is we often work with trade unions in developing countries and other places, and one of the questions always is how do you measure inflation? How do you measure unemployment?

We believe that the ILO convention as well as the greater detailed advances that the U.S. Bureau of Labor Statistics has made are an important element in helping them develop the price system or the price measurement change system for their country or an unemployment measurement and, therefore, we think this is also a very important element.

Another feature that our testimony highlights because we think it is very important is both the convention and the Bureau of Labor Statistics' practice is to have advisory bodies of both the business community and the labor community to review the whole statistical process.

We think that helps assure that the statistical methodology reflects what is happening in the real world, and we think that is an important element.

Senator MOYNIHAN. That is a practice which began in this country, did it not?

Mr. OSWALD. Yes, it did. It is incorporated in the new Convention 160.

On that basis and on the basis that we are the leading proponent of comparable statistics, that it is helpful both for our own understanding of our economy, as you indicated in comparison to other countries; that is, the Soviet Union and others—comparability statistics are helpful. It is important to understand what is going on in the world and in terms of our own understanding in terms of the trade problems and other problems we face.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Oswald appears in the appendix.]

Senator MOYNIHAN. Thank you, sir.

Mr. Glade, we welcome you back to this committee. You have a statement which will be put into the record, of course, as if read. You appear on behalf of the U.S. Council for International Business, and please proceed if you would. Address yourself to the same subject and any others that you think the committee should hear.

STATEMENT OF BRIAN GLADE, DIRECTOR OF INTERNATIONAL AFFAIRS, U.S. COUNCIL FOR INTERNATIONAL BUSINESS, ACCOMPANIED BY EDWARD POTTER, ESQ., McGUINNESS & WILLIAMS, COUNSEL TO THE U.S. COUNCIL FOR INTERNATIONAL BUSINESS

Mr. GLADE. Good morning and thank you, Mr. Chairman. I first would like to express the regrets of Ambassador Katz who, of course, would have been here had his travel schedule not precluded that. I am speaking on his behalf and on behalf of the U.S. Council.

Also with me is Edward Potter, who serves as legal counsel to the U.S. Council and is also our representative on the TAPILS working group which played a very instrumental part in putting together the report for this committee's discussion.

I should tell you more importantly that the U.S. Council is the representative in the United States of the International Organization of Employers. It is through that body and directly that we represent employer interests to the International Labor Organization.

In prior years the National Association of Manufacturers and the U.S. Chamber had shared that responsibility on behalf of U.S. business. Both the NAM and the U.S. Chamber are members of the U.S. Council and, of course, Mr. Lunnie is sitting here with us, which I am very grateful for.

You will recall just over 2 years ago that Mr. Katz, Mr. Potter, and I sat here before you to express our views on U.S. ratification of ILO Conventions 144 and 147. Other speakers before me have talked about the importance of those conventions. I would only say that with the ratification of those two instruments in 1988 the United States, of course, broke new ground, not only in a historical sense, ratifying the first conventions after almost 35 years, as you have noted, but in a legal and procedural sense which bears on our discussion today of Convention 160. On that point I would like to elaborate.

Senator MOYNIHAN. Please do.

Mr. GLADE. As we stated in the committee 2 years ago. the business community was and continues to be concerned because many of the ILO conventions to be examined are at variance with U.S. law and practice both at the Federal and State levels.

This concern was addressed in the ratification history of Convention 144. At that time we agreed not to oppose ratification if there were a public explanation of the basis that is the groundrules by which other conventions would be examined for ratification.

Of course, I will not chronicle the history of the groundrules which have been talked about already. I would note, however, that it was in the President's committee on the ILO that the U.S. tripartite community reached unanimous agreement regarding the rules that would govern the review of ILO conventions.

Mr. Davis, I believe, accurately reflected the text of those three groundrules. Important in this regard is the Senate resolution of ratification of Convention 144 which states that Senate advice and consent to ratification of Convention 144 was subject to the declaration of the three groundrules.

Mr. MOYNIHAN. Would you recommend that this become a standard procedure with us?

Mr. OSWALD. That should absolutely be a standard procedure for you as it is for the tripartite community which examines the conventions. This background is necessary from our perspective in order to put ratification of Convention 160 into its proper context for Convention No. 160 is the first ILO convention to be considered for ratification since the formal and public adoption of the ground rules for reviewing ILO instruments.

You have heard how TAPILS agreed in accordance with these groundrules in 1988 that there were no legal obstacles to ratification by the United States of the convention concerning labor statistics, and Dr. Norwood has already told you how the Bureau had confirmed that the United States already was in compliance and, in fact, far exceeds the requirements of the convention. And, of course, there would be no modification of the United States from her point of view nor from the point of view of the solicitor.

In line, therefore, with current practice by BLS, the BLS has a longstanding and productive policy of consulting with employers on its programs. This is one area where Convention 160 already covers what the United States is doing.

You may not know that the BLS meets twice each year with the Business Advisory Council, which is comprised of business representatives directly from companies and which has a separate committee for each program area of labor statistics. The committees meet with technicians in their program area for an in-depth discussion of the design, revision, maintenance analysis, and publication of the results of the statistical studies.

I should probably tell you a little bit about how the convention relates to the business community. Of course, the most fundamental use for BLS data is economic forecasting. Statistics can provide companies with information about whether a particular labor market is tight or not as well as the health of the national, regional, and local economies. In turn, this information could affect investment, marketing, and pricing decisions. Human resources executives can use wage indices to gauge movements. Some companies even make internal use of such data as average earnings and hours worked.

Some employers tie the provisions of contracts in formal fashion to the Consumer Price Index or the Producer Price Index. Statistical bureaus are beneficial to a free and open economy. In fact, I would say they are essential, and their data can measure progress in a number of areas such as combating unemployment, creating jobs, and controlling inflation.

In my written testimony which is being submitted, you will note that I also draw an analogy to what is happening in Poland and Hungary echoing the remarks of Dr. Norwood that statistics are an important feature of an economy, and they should also be an important feature of nonmarket economies.

We believe that U.S. ratification will demonstrate to countries like Poland and Hungary, for example, that in order to move effectively toward a more open economic system, it will be essential to compile and analyze comprehensive statistics on employment trends, prices, wages, inflation, and productivity.

It is through this compilation of accurate and complete data on the economy or the labor market that a country can confront the

challenge of adjusting to worldwide competitive pressures and generating growth which are both challenges for these nonmarket economies. Such information can furnish an industrial relations advantage to a dynamic economy.

To conclude, Mr. Chairman, in ratifying ILO Convention No. 160, the United States clearly demonstrates its priority commitment to providing accurate, timely, and honest information about its economy. To conclude, the U.S. Council supports U.S. ratification of ILO Convention 160 on labor statistics, but we recognize that an essential prerequisite to ratification of any ILO convention by the United States is a comprehensive tripartite legal review of ILO conventions to determine whether such ratification would modify existing Federal and State law and practice. Thank you.

[The prepared statement of Mr. Glade appears in the appendix.]

Senator MOYNIHAN. We thank you, sir. Let me just say that this Senator would be completely of your view. That is the whole idea of the ILO. It is a tripartite system and if business and labor do not find these conventions acceptable, they are, therefore, not acceptable.

I think we are finding a way to work together.

Mr. Potter, did you want to comment?

Mr. POTTER. I do not have a prepared statement, Mr. Chairman, but my role in the participation on this convention is to look at it in terms of U.S. compliance with the legal obligations under this convention or any other ILO convention, and through the TAPILS process we have assured ourselves that the United States is in full compliance.

Senator MOYNIHAN. Good. That is what we want to know, and if we get those assurances, we will go ahead, and if we do not, we will not. It is as simple as that.

I want to just emphasize what may be a personal view, but I think Mr. Glade shares it. It is a fact that the United States was the first nation to begin systematically collecting the economic data that made our free enterprise system so successful so early. You knew what was out there.

Corporations plan—or the ones that do well plan, I should think. And what do they plan with? They plan with information. Where does the information come from? It comes from various sources.

The truth of the matter is we have built this need for accurate statistics into our system by apportioning the House of Representatives on the basis of population.

Mr. Lunnie, it is very good of you to be here. We knew that you were not well, and only just now felt you could be here on behalf of the National Association of Manufacturers as one of the plank owners, as we used to say in the Navy, of the ILO. We welcome you, sir.

STATEMENT OF F.M. LUNNIE, JR., DIRECTOR OF EMPLOYEE RELATIONS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. LUNNIE. Thank you, Mr. Chairman. It is a pleasure to be back. My comments this morning will be brief. I apologize for not having gotten a statement up earlier, but it will be available for the record.

Senator MOYNIHAN. No apologies of any kind are needed.

Mr. LUNNIE. Those who have preceded me, Mr. Oswald, Dr. Norwood, and the others, have touched on the convention itself, its provisions, and the uses of statistics, so there is really very little that I can add.

What I would like to touch on, though, is something that was brought up first I think by Mr. Davis and then later by Mr. Glade and yourself, sir, and that has to do with the history that has evolved in the past couple of years in terms of the ILO, because as you have pointed out I think it is pretty critical.

As Mr. Glade pointed out, we are a member of the U.S. Council. We have worked very constructively and very closely together, and as you might imagine that relationship has been forged much more closely with the activities of Convention 144.

As NAM testified in 1987, the Senate's consideration of Convention 144 raised fundamental concerns about whether its ratification would be misinterpreted as it changed in longstanding policy and perhaps increased pressure, both domestically and internationally, to adopt other nonmaritime conventions. A number of them, as have been referred to this morning, conflict greatly with U.S. labor law and practice.

We were further concerned with what we perceived to be a mischaracterization of ILO conventions as internationally recognized or universal standards. I believe we pointed out that in 1987 only six of the ILO member states had adopted more than 50 percent of the conventions.

Senator MOYNIHAN. Yes, and I think I commented at the time that there was virtually an inverse correlation between labor standards and the number of treaties on labor standards that a country has ratified.

Mr. LUNNIE. Yes. Then finally there was a question and it remains open, I know, as to whether or not ratification by the United States is a requisite to the effectiveness of this country in the ILO. At that time, you will recall, we were disinclined to accept that and we remain of that position, sir.

Many of these reservations have been reflected in the actions in 1985 of the employer representative to the President's committee and his able counsel. During their deliberations on Convention 144, Mr. Katz and Mr. Potter were able to achieve a consensus in trying to identify what groundrules or criterion would be used to govern the future review of ILO conventions.

Acting on that basis and trying to support the U.S. Council's efforts, NAM through its subcommittee on multinational labor relations began working on a policy which was later adopted by our board of directors and then later our testimony that was presented, which outlined it in much greater detail.

Fundamental to all of those concerns were the potential adverse effect on the U.S. economy, productivity, job growth, and the like, that adoption of some of the ILO conventions might have.

All of these are antithetical to the Nation's goals to ensure that we are globally competitive and that Americans continue to enjoy an increased standard of living, and if you look perhaps to our partners in Western Europe, where in the earlier part of this decade they had experienced high unemployment, almost anemia,

you find that the OEC countries and the EC right now are trying to find out how do we get rid of some of these market rigidities, and I think they are starting to move toward our market system.

I have reviewed, and I apologize if I have engaged in too long a discussion on this history, but we think it is very essential.

Senator MOYNIHAN. No need to apologize. This history is what is getting us back into an active role.

Mr. LUNNIE. In conclusion, NAM will not oppose ratification of the convention. It in no way conflicts with the groundrules that have been agreed to and as has been pointed out by everybody it offers, I think, great advantage to the United States and the developing countries around the world. But there will continue to be increasing pressure, I think, on the United States to look at other conventions and we will judge those on an individual basis, the principal consideration, obviously, being the groundrules. If those groundrules are not observed, then NAM will have no alternative but to oppose them.

Thank you, sir.

[The statement of Mr. Lunnie appears in the appendix.]

Senator MOYNIHAN. As well you ought. I think we have an agreement here as to how we are going to proceed. I see Mr. Oswald nodding agreement.

Mr. OSWALD. Yes, sir.

Senator MOYNIHAN. And Mr. Glade. You know, you are going to have to police this for us. This committee is not going to know if these things are not working right, but we are always going to hear you. You are going to have the last word. Shall we have this understood, the last word comes from this panel and the groups it represents?

You have been around this for a long time. You are not new to it. Samuel Gompers headed the commission that drew up the constitution of the International Labor Organization. The NAM was present at the creation and the new group is a direct descendent of others.

So, either this serves the interests of business and labor or—that is the only condition on which it can very well serve the interests of government and as long as this is clearly understood between this committee and you, then we will get along fine.

We are here to advise ratification if you think they are a good idea and not to if you do not. It is just as simple as that. This committee is never going to recommend ratification while I am on it if a convention does not have the absolute support of labor and the business community. That is all.

I have a friendly letter from Senator Hatch, who is the ranking minority member of the Committee on Labor and Human Resources, who writes that he is very much in support of this measure and I would like to put that in the record after the statement of Senator Helms.

[The information referred to follows:]

LETTER FROM SENATOR ORRIN G. HATCH

NOVEMBER 1, 1989.

Senator DANIEL PATRICK MOYNIHAN,
Chairman, Subcommittee on Near Eastern and South Asian Affairs, U.S. Senate, Washington, DC.

DEAR PAT: While I am unfortunately unable to attend the hearing this morning, I want to convey to you my strong support for your efforts here today.

You and I have long shared an interest in the International Labor Organization. I believe that your work in securing ratification of Convention No. 160, concerning labor statistics, is but one example of your commitment and your energetic leadership in this area, which I greatly applaud.

I have long believed that the ILO serves several important functions, including providing this country with an opportunity to favorably demonstrate our brand of labor-management relations and employee rights, especially compared to the labor force realities of Communist countries.

I look forward to working with you in this and other ILO related endeavors to enhance the U.S. leadership role in this important international organization.

Sincerely,

ORRIN G. HATCH,
Ranking Minority Member.

Senator MOYNIHAN. I think that about concludes our morning.

I would like to welcome some of our guests. I see that Mr. Steven Schlossberg, who is the head of the ILO office here in Washington, is present and I would like to acknowledge that.

I do not see any other citizens seeking recognition, and on that basis, with an expression of gratitude to all of you for finding the time and for the work you have done in advance, I will announce that the committee will now close its session and we look forward to taking up this matter. I should certainly recommend to the full committee that we proceed and I should not be surprised if we do.

I also want to note that we are acting at the behest and the suggestion of former President Reagan who forwarded this convention to us.

[Whereupon at 11:18 a.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

PREPARED STATEMENT OF SECRETARY OF LABOR ELIZABETH H. DOLE

I appreciate the opportunity to appear before you today to testify in behalf of ratification by the United States of International Labor Organization (ILO) Convention No. 160 Concerning Labor Statistics. As Secretary of Labor, I serve as Chairman of the President's Committee on the ILO, a tripartite consultative mechanism that advises the President on ILO matters. The members of this Federal advisory committee include the Secretaries of State and Commerce, the National Security Advisor, and the Presidents of the AFL-CIO and the U.S. Council for International Business.

I am accompanied by Janet L. Norwood, Commissioner of the Department's Bureau of Labor Statistics (BLS), and Robert P. Davis, the Solicitor of Labor. Commissioner Norwood's Bureau is responsible for the statistical activities covered by Convention 160, and BLS staff participated actively in the drafting of this convention, which was adopted in 1985 by the International Labor Conference. Mr. Davis chairs the Tripartite Advisory Panel on International Labor Standards (TAPILS). This tripartite subgroup of the President's Committee on the ILO is responsible for the legal analysis which provided the basis for the Committee's recommendation that the President request the advice and consent of the Senate to ratification of Convention 160.

Mr. Chairman, the Senate already has before it President Reagan's January 3, 1989 message transmitting Convention 160. Because the document includes detailed information about the convention and U.S. law and practice regarding it and Commissioner Norwood will address its implications for domestic and international labor statistics, I shall limit my comments to two issues. First, I want to place the question of ratification of Convention 160 in the larger context of the procedures that we in the U.S. and this Administration are following regarding ratification of ILO conventions, and then I want to draw this

Committee's attention to the reasons why we need to improve our ratification record in this unique technical UN agency.

It may be useful, however, to preface those comments with a brief overview of the major provisions of Convention 160 and current U.S. compliance with its requirements. ILO Convention 160 is a technical convention, which requires ratifying countries regularly to collect, compile, and publish basic labor statistics in at least one of the following nine subject areas:

-- the economically active population, employment, unemployment, and underemployment;
-- the structure and distribution of the economically active population;
-- average earnings and hours of work;
-- the wage structure and distribution;
-- labor cost;
-- consumer price indices;
-- household or family expenditure and income;
-- occupational injuries and diseases; and
-- industrial disputes.

As we are all well aware, the 150 members of the ILO vary enormously in their resources and level of development. To improve international labor statistics by encouraging worldwide ratification, a fundamental aim of this convention is to permit ratifying countries to expand their statistical programs progressively, as their resources permit. Ratifying countries are thus free to choose the statistical areas in which they accept the obligations of the convention. In addition, they may limit -- either before or after ratification -- the scope of their statistical programs to specified categories of workers, sectors of the economy, branches of economic activity, or geographical areas. In the case of the United States, our national statistical practices currently meet or surpass the requirements of Convention 160 in all nine subject areas.

To help ensure that national statistical programs are both comparable across the globe and "user friendly," Convention 160 also requires ratifying countries, when designing or revising statistics in the areas accepted under the convention, to take ILO statistical standards and guidelines into consideration and

to consult with their representative organizations of employers and workers.

The United States is already in compliance with those provisions. In developing labor statistics programs, the Bureau of Labor Statistics currently takes ILO standards and guidelines into consideration. Indeed, BLS actively participates in the ILO's International Conference of Labor Statisticians, which is convened every five years to help formulate ILO standards and guidelines on labor statistics, and our programs have often served as a model for ILO standards. Finally, BLS regularly meets with representatives of U.S. employer and worker organizations to discuss all aspects of its labor statistics programs. This consultation typically takes place at biannual meetings between BLS staff and the longstanding BLS Business and Labor Research Advisory Councils.

Turning now to the context in which we in the United States are considering ratification of ILO Convention 160. Mr. Chairman, I know I needn't remind you that when, in 1988, the Senate almost unanimously approved ratification of ILO Conventions 144 and 147 and President Reagan ratified them, we broke 35 years of U.S. inaction in this area. Until last year, old fears still lingered that the treatymaking power of the President and the Senate regarding ILO standards might, by bypassing normal legislative procedures and ignoring our Federal/State system of government, be used to undermine our domestic labor law.

The President's Committee on the ILO took two actions to respond directly to those concerns. First, in 1980, the Committee established TAPILS, the panel of legal experts to which I have already referred, and directed that it undertake, with a view towards possible ratification, full legal analyses of selected ILO conventions from the perspectives of business and labor as well as government. This tripartite group first exhaustively analyzed Conventions 144 and 147, and, as you know,

found no legal impediments to U.S. ratification of those ILO standards. In 1988, after a detailed review of Convention 160, TAPILS similarly found that U.S. law and practice are in full compliance with Convention 160.

The second action the President's Committee took to respond to those lingering fears flowed out of its consideration of Convention 144, which requires tripartite consultation on ILO matters, including unratified conventions. The Committee's extensive discussions of that convention led to a tripartite agreement regarding future consideration of U.S. ratification of ILO standards. This agreement established that neither the President's Committee on the ILO, nor its constituent members, intend to use ratification of ILO conventions to change domestic labor law. For the record, Mr. Chairman, I should like to reiterate that agreement and note this Administration's meticulous adherence to it.

The agreement consists of three principles:

-- That each ILO convention will be examined on its merits on a tripartite basis;

-- That if there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and

-- There is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

Finally, Mr. Chairman, while the Commissioner of the Department's Bureau of Labor Statistics will address the technical significance of this ILO standard, I would like to address briefly the reasons why ratification of ILO Convention 160 would generally advance U.S. interests.

As you are well aware, our ILO ratification record is very poor indeed. Between 1934, when we joined the Organization, and

1986, when Conventions 144 and 147 were transmitted to the Senate, as a result of the fears to which I have already alluded, the Executive Branch submitted only 24 ILO conventions to the Senate with a request for its advice and consent to ratification. Today, the United States has ratified only nine of the 169 conventions adopted by the ILO.

We need to improve that record because, as previous Secretaries of Labor and State and Senators Moynihan and Hatch have pointed out in hearings that go back to 1985, our conspicuously poor ratification record hinders our efforts to play a leadership role in that Organization. And, let us be clear, our leadership efforts in the ILO center around our strong support for its substantial human rights activities as well as its technical programs in the area of employment and training as well as statistics and research.

It is important to remember that the ILO is not just the oldest and most established technical agency in the United Nations system, it is also the world's only tripartite international organization. Further, the ILO is an international organization in which governments not only meet as equal--and autonomous--partners with workers and employers, but also jointly draft, adopt, and supervise the implementation of international labor standards. Most of those labor standards are technical instruments, like Convention 160, which deal with various issues related to employment, social security, safety and health, conditions of work, and so forth. Some, however, enshrine fundamental human rights, such as freedom of association.

Given the long-established tripartite structure as well as the principles of the ILO, it is not surprising that this organization is the UN's most effective advocate of human rights. We are all aware, for example, of the ILO's courageous support of Solidarity during its darkest days and the critical role it has thus played in Poland's movement towards democracy.

But our ratification record works against our participation

in the Organization's activities in precisely this critical area. Although we are a strong advocate of the ILO's standard-setting activities and a leading critic of violations of fundamental worker rights, our poor ratification record raises questions from a wide array of government, worker, and employer representatives, from friends as well as the unfriendly, about the sincerity of our efforts. In fact, because our failure to ratify ILO standards for the most part exempts us from examination by the ILO's supervisory machinery, we are accused of not practicing what we preach. Moreover, under the ILO Constitution, our failure to ratify most ILO conventions prohibits us from bringing complaints against other countries for failure to observe standards they have ratified. Thus, our poor ratification record weakens our leadership in the ILO in a very practical and concrete way, as well as in the more general political sense I have just described.

In sum, Mr.Chairman and members of this Committee, the Administration requests the Senate's advice and consent to ratification of ILO Convention 160 for two reasons; First, in order to give our support to the important technical goals of this Convention, and secondly, to enhance our own standing and influence in this tripartite international organization.

PREPARED STATEMENT OF COMMISSIONER JANET L. NORWOOD, BUREAU OF LABOR STATISTICS

I am pleased to appear before this Committee as you consider ILO Convention 160 relating to the international system of labor statistics.

As you know, on January 3, 1989, International Labor Organization (ILO) Convention 160 concerning labor statistics was sent by then President Reagan to the United States Senate. The convention is designed to motivate all countries to adopt a comprehensive program of labor statistics. This would assist government and private industry by enhancing the availability of

economic data on a global basis. It has become increasingly clear that labor market information is cricically important for economic decisions by policy makers and private companies, and that comparable data across countries is important to the functioning of markets in an increasingly internationalized world.

The Bureau of Labor Statistics has a long history of producing information useful for these purposes. Our programs currently meet or surpass the requirements of the convention in all nine subject areas. We give careful consideration to ILO standards and guidelines in developing our programs, and have been active participants in the ILO-sponsored conferences that formulate these guidelines. We are also active in other international statistical forums, exchanging information on data development, collection methodology, processing systems, and analytical findings.

One of the Bureau's important initiatives in the international area is the development of reliable and comparable information across countries that can be used to assess U.S. economic performance relative to other countries, and to evaluate the competitive position of the United States in international trade. The information is also useful to those concerned with foreign trade and investment because wherever possible we adjust the statistics published by foreign countries and international statistical agencies for consistency with U.S. concepts.

Our work on international comparisons of unemployment began more than 25 years ago when the President's Committee to Appraise Employment and Unemployment Statistics asked the Bureau to evaluate the contribution of measurement differences to the higher unemployment rate in the United States compared to other industrial nations. The first study, done in 1961, found that differences in statistical procedures and definitions were a factor, but only a minor one. Nonetheless, the review of the structural, demographic, and statistical differences can be very

useful, and our program of comparing unemployment and related labor market variables among countries is well known. In fact, it has become a model for international groupings, like the Organization for Economic Cooperation and Development (OECD) and the European Community (EC) in attempting comparisons among their members. More recently, the Bureau has been cooperating with the ILO in its research program to develop more comparable measures of unemployment world-wide.

The competitive situation has changed considerably in the last quarter of a century, of course. Today, our work shows that the United States has lower unemployment rates than Canada, the U.K. and most of western Europe, but our joblessness is still higher than in Japan and Sweden.

Comparisons among countries cannot be restricted to the statistics alone, however. We know for example, that serious structural problems of joblessness exist in the United States despite the fact that overall joblessness is near 5 percent. Jobless rates for our minority population and for those in some of our urban areas remain uncomfortably high. At the same time, we need to recognize the differences in policy approach and demographic structure that account for the relatively low unemployment rates in Sweden and Japan. The Swedish government uses a variety of programs (public relief work, vocational training, special schemes for youth, and sheltered workshops) to keep the population at work. Social welfare programs differ from country to country, as does the extent and type of immigration. For example, European countries generally curtail work schedules before eliminating jobs, making up for the reduced income with payments from their unemployment insurance system. In Japan, still a different situation exists. Permanent workers -- primarily males in large establishments -- are generally shielded from unemployment by their employers by hours reductions and by temporarily being shifted into other jobs or even to different plants. Other workers, mostly women and older workers who have

been retired from their previous jobs below the age when full pension benefits take effect, frequently bypass unemployment status by moving from employment to "not in the labor force" when the economy slackens. If these underutilized and discouraged workers were counted both in the Japanese and U.S. statistics, the unemployment rates of the two countries would be much closer together.

These examples illustrate the complexity of developing comparable statistics across nations. One of the Bureau's current research efforts is directed toward developing a series of comparative unemployment measures ranging from relatively narrow measures (e.g. the long term unemployed) to broader measures (that encompass economic part-time and discouraged workers). This research should improve our understanding of the labor market situation across countries with different policies and practices in dealing with unemployment.

One difficult issue that we would like to see addressed by the wider statistical community is international comparisons of poverty and living standards. In its latest release on the numbers of persons in poverty, the Census Bureau provided a number of alternative approaches to measurement, and a number of scholars have raised questions about the consumption data that form the basis for our official definition of poverty. Difficult as that issue is in one country, imagine the problems of comparability across countries. Although many countries prepare national poverty statistics, the definitions and methods vary greatly from country to country. There is also considerable diversity in conceptual approach. The recently initiated Luxembourg Income Study project, which developed an international data bank of income statistics with a common conceptual framework, is a positive step in that direction.

The ILO Convention under consideration by the Senate also provides for a system of comparable wage and earnings data. This is an analytical area of increasing importance in this country as

well as in the rest of the world. Methods used by employers to compensate workers for their performance on the job are shifting in this country, reflecting the changing needs of both management and labor. Innovative benefit packages with flexible options are emerging, and the use of profit sharing programs and lump sum payments has increased. Thus, straight time pay accounts for a smaller share of the total compensation package. The changing demographic make-up of our workforce will make these kinds of issues more important in the future than they have been in the past. Much more work needs to be done internationally if we are to be in a position to understand the changes that will affect countries in different ways in the future. These kinds of data are important inputs to the BLS work on comparing productivity, unit labor costs, and hourly compensation costs.

BLS is also actively involved in the International Comparison Project for studying purchasing power parity, under the auspices of the United Nations. Purchasing power parities represent the number of units of a currency needed to purchase the same quantity of goods and services in one country, as would be required in another country to purchase an equivalent basket of goods and services. Purchasing power parities are more appropriate than market exchange rates in comparing living standards and relative output levels across countries because fluctuations in market exchange rates do not necessarily reflect real changes in the relative purchasing power of the countries.

These issues highlight some of the problems in comparing non-market or controlled economies to free-market oriented ones. The development of a data base of realistic price data, i.e., containing those established by a controlled economy as well as those prevailing in the "black market" economy is essential to understanding differences among countries. We do not know how to examine, for example, the effect of commodity shortages for purposes of comparison between controlled and freely set price economies.

The BLS program of technical assistance and consultation with other countries and with the ILO can be helpful in handling some of these issues. Our Bureau frequently conducts seminars on such subjects as methods of collection, survey management and design, analysis, and dissemination of statistical information. Bureau staff as well as persons representing other countries benefit from the exchange of ideas and problems.

The importance of this work, as well as the underlying purpose of the ILO Convention and this hearing is underscored by current developments in Eastern Europe. The efforts of the governments of Poland and Hungary to move toward freeing their markets from government control and their desire to encourage private investment underscores, I believe, the need for statistics that are accurate, objective and relevant. We at BLS have been giving a great deal of thought to the kind of data base that might be needed by these countries as we participate in conjunction with other parts of the Department of Labor, in developing a useful response to their requests for technical assistance. ILO Convention 160 provides a sound foundation for the United States and other ILO members in carrying out these tasks.

PREPARED STATEMENT OF SPECIAL ASSISTANT TO THE SECRETARY OF STATE ANTHONY G. FREEMAN

Thank you, Mr. Chairman for the opportunity to appear in support of Convention 160 of the International Labor Organization regarding labor statistics.

In 1985 the U.S., with the endorsement of the Congress, committed itself to a new policy of undertaking to review systematically and to determine the ratifiability of those ILO conventions that are consistent with U.S. labor law and practice. This undertaking reversed a 30-odd year history of neglect by the U.S. in the matter of ILO conventions which

poorly served the cause of promoting international labor standards that protect working people around the globe and which led to a decline of U.S. influence in this international organization.

The setting, supervision and application of international labor standards are the principal function of the ILO and are a major contribution to the US interest in promoting human rights and worker rights in the world. The political commitment of the U.S. to determine the ratifiability of ILO conventions with full tripartite consultations is essential to preserve international respect for the ILO's unique standard-setting and supervisory functions.

Since the adoption of our new policy approach in 1985, the U.S., with the invaluable support of this committee and the advice and consent of the Senate, ratified ILO Conventions 144 on Tripartite Consulation and 147 on Merchant Shipping in 1988 and legal analyzes is far advanced with regard to a basic human rights standard, Convention 105 on the abolition of forced labor.

The convention before you, No. 160 on labor statistics, was adopted by the International Labor Conference in 1988. It is a straightforward convention requiring adherents to collect, compile and separate data at least one of nine subject areas. The U.S., of course, has long been one of the world's leaders in labor statistics and already meets or exceeds the requirements of this convention. Ratification of this convention will require no changes, additions or adjustments to our statistical gathering procedures. Our acceptance of C. 160 will reinforce our commitment to the ILO and will be a signal to all countries of the importance we attach to its programs. Ratification will strengthen our efforts to urge other nations, especially developing countries, to undertake the programs of labor data

collection they need to support their development. Moreover, ratification will keep up the momentum we began in 1985 and demonstrate the sincerity of the U.S. effort to ratify ILO conventions consistent with our laws.

It is therefore in the foreign policy interest of the U.S., Mr. Chairman, to ratify this convention in the quickest time possible and we urge the Senate to provide its advice and consent in an expeditious manner.

U.S. Department of Labor

Deputy Under Secretary for
International Affairs
Washington, D.C. 20210

NOV 7 1989

The Honorable Daniel P. Moynihan
United States Senate
Washington, D.C. 20510

Dear Senator Moynihan:

In response to your request last week during the Foreign Relations Committee hearing on ILO Convention No. 160, my staff has compiled the following materials:

(1) Excerpts from the 1984 Report of the ILO Commission of Inquiry concerning freedom of association in Poland, including the Commission's conclusions and recommendations.

(2) Recent observations by the independent ILO Committee of Experts concerning the USSR's application of ILO Convention No. 29 on forced labor, No. 87 on freedom of association, and No. 111 on employment discrimination.

To supplement the observations on the USSR, I am also sending you a copy of our Labor Standards Profile on the Soviet Union. My staff maintains similar profiles on some 70 countries, which we use as one resource in our active participation in the ILO Conference Committee on the Application of Conventions and Recommendations.

If you have questions or need any further material, please call Ms. Julie Misner at 523-6241.

Sincerely,

Shellyn G. McCaffrey

Shellyn G. McCaffrey

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SPECIAL SUPPLEMENT

Vol. LXVII, 1984 — *Series B*

Report of the Commission instituted under article 26 of the Constitution of the International Labour Organisation to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), presented by delegates at the 68th Session of the International Labour Conference

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II. Communication dated 24 June 1983 from the Director-General of the ILO to the Permanent Representative of the Polish People's Republic

CHAPTER 14

452. It is now for the Commission to state its conclusions and recommendations on the complaint which the Governing Body referred to it for consideration.

453. It must first examine a preliminary question, namely that of the non-participation of the Government of Poland in the procedure.

Preliminary question of the non-participation of the Government of Poland in the procedure

454. The Commission found itself faced with a serious difficulty in that the Government of Poland, against which the complaint was made, systematically abstained from participating in the procedure and from replying to the various communications addressed to it concerning the complaint.

455. When the Governing Body took the decision on 23 June 1983 to appoint a Commission of Inquiry under article 26 of the Constitution of the International Labour Organisation on the complaint in question, the Government of Poland addressed a communication dated 24 June 1983 to the Director-General of the International Labour Office, the text of which is appended to the present report.[1] In this communication, the Government rejected the decision of the Governing Body, which constituted "interference in Poland's internal affairs". According to the Government, the complaint was politically motivated and the ILO was being used "in a manner contrary to the spirit and letter of its Constitution". The Government therefore decided to suspend its co-operation with the ILO. The same day, the Director-General of the ILO replied[2] that he regretted the decision all the more because he was personally convinced that a Commission of Inquiry could provide a valuable means of arriving at a mutually acceptable solution. The Director-General also recalled that the appointment of the Commission of Inquiry was based on provisions of the Constitution of the ILO to which the Government of Poland had subscribed on becoming a Member of the Organisation, and on the obligations that the Government had freely accepted by ratifying the Conventions in question.

456. When the Commission held its First Session, in September 1983, it addressed to the Government a communication dated 7 September 1983, in which it informed the Government of the procedure it intended to follow and expressed the hope that the Government would extend to it the co-operation that was provided for by the Constitution of the ILO and that had always been given to earlier Commissions by the various member States of the ILO in cases in which this procedure had been used in the past. The Government did not reply to the communication, but let the Commission know orally that it abided by its declaration of non-cooperation with the ILO.

457. After the expiry, on 21 November 1983, of the time in which the parties and certain governments and organisations had been asked to communicate

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[1] See Appendix 1.
[2] See Appendix 2.

information to the Commission, the Commission once again addressed itself to the Government. In its letter, dated 25 November 1983, the Commission expressed itself as follows:

> The Governing Body of the ILO, having received a complaint from two delegates to the Conference, filed under article 26 of the Constitution of the ILO, has, in the exercise of the powers conferred on it by this provision, duly appointed the present Commission with a view to examining the application by Poland of two Conventions ratified by your country. The competence of the Commission is thus beyond doubt in international law, under article 26 of the Constitution of the ILO, which has been accepted by Poland and by which Poland is bound as a Member of the Organisation. Under article 27 of the Constitution, Poland and all other Members have agreed that they will "place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint". The non-cooperation of your Government in this connection would constitute a breach of an international obligation on the part of your Government.
>
> The Commission further wishes to emphasise that, as it has stated in its previous letter, it intends to carry out its task with absolute objectivity and impartiality and in full independence. The Commission's task will be to examine, in accordance with the Constitution of the Organisation, how your Government has given effect to the international obligations that it freely accepted by ratifying the Conventions which are the subject of the complaint. The Commission will thus carefully examine the position of the various parties, including that of your Government, as expressed during earlier procedures, but it earnestly hopes that the point of view of your Government and the factors on it which it is based will be presented by a Government representative. It is obvious that the participation of your Government in the procedure would in no way imply the recognition of the exactitude or validity of the substance of the complaints filed under article 26 of the Constitution.
>
> The Commission is aware that the world is going through a period of tension during which every effort should be made to reduce such tension and to seek solutions to the problems that exist. This end can be attained only through respect for international obligations and participation in good faith in the procedures established with a view to the peaceful settlement of disputes. It is in this spirit that the Commission appeals to the Government of Poland to collaborate in the procedure provided for by article 26 and the following articles of the Constitution of the ILO, to which it is the duty of the Commission to give effect. Acting in this way, the Government would give proof, as various countries in Europe, Africa and the Americas have done in similar cases, of its desire to meet its international obligations and to contribute to international co-operation.

458. This letter also indicated to the Government of Poland the communications received from the complainants, certain governments and certain international organisations, copies of which were transmitted to the Government for its information and for any comments it might wish to make.

459. The Government did not reply to this communication and returned it without comment.

460. On a third occasion, the International Labour Office, having prepared for the Commission an account of Polish trade union legislation, transmitted it on 6 January 1984 to the Government of Poland to enable it to make any observations which it might deem appropriate. The Government also refrained from replying to this communication.

461. At the session devoted to the hearing of witnesses (16 to 27 January 1984), the Government of Poland was not represented nor did it produce the witnesses whose presence the Commission had asked it to ensure or to facilitate; neither did it facilitate the presence of those witnesses, proposed by the complainants, who lived in Poland.

462. After the session devoted to the hearing of witnesses, the Commission wrote to the Government on 31 January 1984, asking it to provide an opportunity to the Commission or one of its members to visit Poland to obtain on the spot the

requisite further information from all authorities, official bodies, trade union organisations and Polish citizens whom the Commission might wish to meet. The Commission pointed out that, for that purpose, it would naturally be necessary for the Commission, or one of its members, to be able to have conversations in private without the presence of witnesses and that persons who might have contact with it should not be subjected to any punitive measure on that account. This letter, too, was returned without comment.

463. Lastly, by a communication dated 23 February 1984, the secretariat of the Commission transmitted a copy of the record of the hearings held during the Second Session of the Commission and lists of members of Solidarity said to have been imprisoned and of workers whose death was alleged to have been caused by the Polish security forces. The Government returned this communication and its enclosures.

464. This attitude raises two questions that need to be examined in succession: the reasons advanced by the Government to justify its non-cooperation (undue interference in internal affairs and the political character of the complaint) and the practical consequences of this non-cooperation from the point of view of establishing the facts.

1. *Examination of the objections concerning undue interference in internal affairs and the allegedly political character of the complaint*

465. The basic objection advanced by the Government of Poland to justify its attitude of non-cooperation was, as has already been said,[3] that the procedure of the complaint constituted "interference in Poland's internal affairs".

466. The Commission is bound to point out that the ILO, by virtue of its Constitution, was established, in particular, to improve conditions of labour and to promote freedom of association in the various countries. It follows that the matters dealt with by the Organisation in this connection no longer fall within the exclusive sphere of States and that the action taken by the Organisation for the purpose cannot be considered to be undue interference in internal affairs, since it falls within the terms of reference that the ILO has received from its Members with a view to attaining the aims assigned to it. By virtue of these terms of reference, the ILO has, moreover, established a procedure for the protection of trade union rights that applies even to countries which have not ratified the Conventions on freedom of association. What is more, in the present case, the action of the Organisation is based on a Convention ratified by the State concerned and it follows a procedure expressly laid down by the Constitution of the ILO (article 26 and the following articles). If the reasoning of the Government of Poland were to be accepted, all action by the ILO – indeed, its very existence – would have to be considered to be interference in the internal affairs of the States. The action involved in the present case consists merely in verifying the effect given to Conventions adopted by the International Labour Conference and ratified by States.

467. The objection based on undue interference in the internal affairs of Poland is thus devoid of any legal validity and cannot justify the non-participation of the Government of Poland in the procedure provided for by article 26 of the Constitution of the ILO. It cannot release the Government from its obligation, under article 27 of the Constitution of the ILO – to which the Commission will return[4] – to "place at the disposal of the Commission all the information in [its]

[3] See above, para. 455.
[4] See below, para. 471.

possession which bears upon the subject-matter of the complaint". This obligation to co-operate was observed by the other six governments of countries in Africa, the Americas and Europe that had previously been concerned in similar procedures.[5] The present case is thus the only one in which a government has entirely failed to respect this obligation.

468. In addition to advancing the objection of undue interference in its internal affairs, the Government of Poland maintained in its letter of 24 June 1983 that the complaint submitted to the Commission was "politically motivated" and that the ILO was "being used in a manner contrary to the spirit and letter of its Constitution". On this point too, the Commission is unable to consider that the complaint has not been validly presented in consequence of its allegedly political character. A similar question was examined in 1963 by a previous Commission of Inquiry appointed under article 26 of the Constitution of the ILO, which concluded[6] that it was "not concerned with any political aspects which the matter may have; the task entrusted to it is that of examining judicially whether or not" there had been a failure of the State concerned to secure the effective observance of the provisions of the Convention under consideration. The Commission in question indicated that, in taking this view, it had been guided by a series of decisions of the International Court of Justice in cases in which it had been contended before the Court that it should decline to give an advisory opinion by reason of the political nature of the question at issue. As had been said by the Court,[7] the Commission in question considered that it was "not concerned with the motives which may have inspired this request"; it stated that "it is no part of its function either to endorse or to impugn them"; while it might be said that the matter before that Commission was "intertwined with political questions",[8] "the task of the Commission is to examine judicially, without regard to such considerations, whether or not the obligations of the Constitution and the Convention are being carried out".[9]

469. The present Commission is of the same opinion and can only emphasise, as it did in the above-mentioned letter[10] of 25 November 1983 to the Government of Poland, that, following receipt of a complaint from two delegates to the Conference filed under article 26 of the Constitution of the ILO, the Governing Body of the ILO, in the exercise of the powers conferred on it by this provision, duly appointed the Commission with a view to examining the application by Poland of two Conventions ratified by that country. The complaint itself represents the exercise of a constitutional right (under the Constitution of the ILO) by two delegates to the International Labour Conference to file, at their discretion, a complaint that they consider that a member State is not securing the effective observance of a Convention which it has ratified. As was pointed out by the above-mentioned Commission of Inquiry,[11] borrowing an expression used by the

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[5] The complaints examined in the past concerned Portugal (1961), Liberia (1962), Greece (1971), Chile (1974) and the Dominican Republic and Haiti (1981).

[6] Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint filed by the Government of Portugal concerning the observance by the Government of Liberia of the Forced Labour Convention, 1930 (No. 29), ILO: *Official Bulletin*, Vol. LXVI, No. 2, Apr. 1963, Supplement II, para. 386, p. 155.

[7] International Court of Justice: *Reports of judgements, advisory opinions and orders, conditions of admission of a State to membership of the United Nations Case*, 1947-48, p. 61.

[8] ibid., 1962, pp. 155-156, *Certain expenses of the United Nations Case*.

[9] See above-mentioned report of the Commission, para. 386, p. 155.

[10] See above, para. 457.

[11] See the above-mentioned report of the Commission, para. 384, pp. 154-155.

International Court of Justice,[12] the language used by the Constitution of the International Labour Organisation to create and to define this constitutional right is "broad, clear and precise: it gives rise to no ambiguity and permits of no exception". The Commission is thus bound to act in accordance with the relevant provisions of the Constitution and it cannot refuse to examine the complaint by reason of the alleged, but by no means established, political motivation said to have inspired the complainants. The objection advanced by the Government in this connection is thus unfounded.

2. *Consequences of the absence of co-operation by the Government of Poland from the point of view of establishing the facts*

470. It is clear that the legal validity of the work of the Commission and of its report cannot be affected by the lack of co-operation by the Government. Article 26 of the Constitution of the ILO expressly provides that the Governing Body may refer to a commission of inquiry a complaint filed by a delegate to the International Labour Conference concerning the observance by a Member of a Convention which that Member has ratified. As the Commission stated in the above-mentioned letter of 25 November 1983, its competence is undoubted in international law by virtue of the Constitution of the ILO, which has been accepted by Poland and by which Poland is bound. Neither the establishment nor the work of the Commission of Inquiry are subject to the agreement or the actual co-operation of the State concerned.

471. Furthermore, the fact that, under article 27 of the Constitution, as has already been stated,[13] each Member agrees to "place at the disposal of the Commission all the information" in its possession that relates to the matter clearly shows that Members have the obligation to co-operate in the procedure and cannot, by refusing to co-operate, obstruct its development. The Commission can only deplore the failure by the Government of Poland to comply with this obligation. In these circumstances, it has carried out, to the best of its ability, the inquiry entrusted to it by the Governing Body.

472. The lack of co-operation by the Government of Poland, however, raises the question how far this may have affected the establishment of the facts by the Commission and its assessment of the trade union situation in Poland. The Commission sent to the Government for comment the documents which it received during the procedure. The Commission would have earnestly wished the Government of Poland to participate in the procedure, as it should have done, in particular by making available the factual and legal elements that would have facilitated an assessment of the situation, by enabling the Commission to go to Poland and meet members of the Government, as well as trade unionists and workers, and by agreeing to discuss with it possible ways of giving full effect to the Conventions in question. Although such co-operation has not been forthcoming, the Commission has systematically taken account, as has been seen, of the information which the Government of Poland had provided and of the position which it had adopted before other organs of the ILO, such as the Committee on Freedom of Association, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Conventions and Recommendations of the International Labour Conference; the most recent such information

[12] This expression was used by the International Court of Justice in the *South-West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa), Preliminary objections*; see International Court of Justice: *Reports of judgements, advisory opinions and orders*, 1962, p. 343.

[13] See above, para. 467.

was contained in the reports under article 22 of the Constitution of the ILO received by the Office in October 1983 and in April 1984. The Commission has also taken account of various legislative texts recently published in Poland, of other official and public documents and of information derived from the very substantial communications and the extensive evidence from persons who had had direct, recent experience of the trade union situation in Poland, which it has carefully evaluated. Moreover, during the hearing of witnesses, the Commission took great pains to obtain information on the various questions to which the Government had attached importance in earlier statements, in order to form an objective opinion on the situation. The Commission considers that the information at its disposal has been entirely sufficient to enable it to make a precise evaluation of the situation as a whole.

Terms of reference of the Commission

473. Article 28 of the Constitution of the International Labour Organisation provides that the Commission shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken and the time within which they should be taken.

474. After the Commission had been appointed and before taking up its duties, its members made a solemn declaration, in accordance with previous practice and as had been suggested to the Governing Body by its officers, undertaking to perform their duties and exercise their powers "honourably, faithfully, impartially and conscientiously". In inviting them to make this declaration, Mr. Francis Blanchard, Director-General of the International Labour Office, said in particular: "The task entrusted to you is to establish the facts without fear or favour and in full independence and impartiality."

475. It is in this capacity as an independent body called upon to make an objective evaluation of the issues in dispute that the Commission has sought to carry out its task. It is in this spirit of independence and impartiality that it sets out below its findings of facts and, with regard to points on which it does not consider the situation to be satisfactory, makes recommendations concerning the steps that should be taken to put them right.

476. It should be recalled here that the role of a Commission of Inquiry, under article 26 of the Constitution of the ILO, is not confined to an examination of the information provided by the parties but that, as has been indicated above,[14] the Commission must itself take all necessary steps to obtain full and objective information on the questions at issue, having regard, as the first Commission of Inquiry pointed out in 1962,[15] to "the public importance of the issues raised by the complaint". Its terms of refetence being thus defined, the Commission must, at the conclusion of its work, in accordance with the Constitution of the ILO, record its findings and make recommendation on the substance of the case.

Conclusions on the substance of the case

477. The allegations made by the complainants had their origin in the measures taken by the authorities against the trade union movement – principally

[14] See above, para. 53.

[15] Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105), ILO: *Official Bulletin*, Vol. XLV, No. 2, Apr. 1962, Supplement II, para. 706, p. 228.

against Solidarity – following the proclamation of martial law in Poland on 13 December 1981. In the information and observations furnished both to the Committee on Freedom of Association and to the Committee of Experts on the Application of Conventions and Recommendations and the Committee on the Application of Conventions and Recommendations of the International Labour Conference, the Government of Poland insisted on the necessity of taking account of the political, economic and social situation in Poland before martial law, which would have led the country to the brink of civil war, led to a growing crisis in the economy and endangered the fundamental interests of the Polish nation and State. The complainants and various international trade union organisations, in the documents that they supplied to the Commission, also referred to the period preceding martial law to indicate that in their opinion none of the activities of Solidarity justified the repressive measures taken by the Government. In this connection, the Commission wishes to make clear that, in accordance with its terms of reference, it will confine itself to examining how far effect was given to Conventions Nos. 87 and 98 in Poland during the period referred to in the complaint and the later communications of the complainants, that is to say, the period following the proclamation of martial law. The Commission will take earlier events into account only so far as they have a direct bearing on the decisions adopted by the Government which affected trade union activities in the country.

478. The complaint and the information placed before the Commission referred to the very serious consequences of the subsequent measures and decisions taken by the authorities, not only against the trade union organisations themselves – in particular their suspension and their dissolution and the restrictions imposed on the activities of trade unions by the new legislation in this field – but also against the leaders and active and ordinary members of the former trade unions: internments, convictions, violent deaths and measures of anti-union discrimination. On each of these points, the Commission received a considerable quantity of information, both in the written documents submitted to it and during the session devoted to the hearing of evidence. The Commission will now examine separately each of these questions and also the various aspects of the present activities of the trade unions, in the order already adopted in the analysis of the information available to it in the previous part of the report.

International obligations under
Conventions Nos. 87 and 98 and martial law

479. Before dealing with these various points, the Commission considers it useful to examine the question raised by the fact that the measures alleged by the complainants were initially taken under martial law. This problem was already considered by an earlier Commission of Inquiry appointed under article 26 of the Constitution of the ILO to examine complaints relating to the violation of Conventions Nos. 87 and 98.[16] As that Commission pointed out, neither of these Conventions contains a provision allowing the possibility of basing a plea of emergency, as an exception to the obligations arising under the Conventions, on the terms of the Conventions themselves. Furthermore, the plea of emergency to justify restrictions on the civil liberties that are essential to the proper exercise of

[16] Report of the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaints concerning the observance by Greece of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ILO: *Official Bulletin*, Vol. LIV, No. 2, Special supplement, 1971, paras. 102-112, pp. 24-26.

trade union rights can be advanced before an international authority only in circumstances of extreme gravity constituting a case of *force majeure* and provided that any measures affecting the application of the Convention are limited in scope and in duration to what is strictly necessary to deal with the situation in question.

480. In the present case, the information in the possession of the Commission on the circumstances prevailing before the proclamation of martial law do not enable it to conclude that a situation existed in Poland such as to justify the temporary non-observance of the Conventions in question. The Government of Poland has supplied no precise information in this connection, either in the communications to the Committee on Freedom of Association or in the reports submitted under article 22 of the Constitution of the ILO. It confined itself to general indications to be mentioned below. Even if it were admitted that a situation of emergency existed in December 1981, the measures which this might have justified could be taken only "to the extent strictly required by the exigencies of the situation", and the complete suppression of the entire trade union movement would have gone beyond these exigencies, as appearing from the information available.

481. At all events, the Commission must observe that the Government remained bound by Conventions Nos. 87 and 98; since martial law has in any case been lifted, it must examine the allegations solely in the light of the provisions of these Conventions ratified by Poland.

Suspension and dissolution of trade union organisations

482. The measures taken by the authorities after the proclamation of martial law led to the complete liquidation of the trade union structures which had existed during the preceding period. This operation was carried out in two stages: in the first stage, on 13 December 1981, the activities of the trade unions were completely suspended; in the second stage, the trade union organisations were dissolved by the new Trade Union Act adopted on 8 October 1982.

483. To justify the proclamation of martial law and the measures suspending trade union activity that resulted from it and the subsequent dissolution of the trade unions, the Government of Poland insisted on the necessity of averting the imminent danger of civil war, restoring law and order, ensuring the normal operation of the state administration and saving the national economy from collapse. The Government maintained that Solidarity had gone beyond the limits not only of the agreements signed with the authorities in August 1980, but also of its own constitution, approved by the Supreme Court in November 1980, by virtue of which the organisation had undertaken to carry on its activities as a trade union in accordance with the national Constitution and respecting the international alliances concluded by Poland. Despite this undertaking, extremist elements among the leaders of Solidarity had directed the organisation towards political action and called for the seizure of power and the overthrow of the political system. According to the leaders of the branch unions, certain groups within Solidarity even had arms and the country was thus heading for open confrontation.[17]

484. To prove its assertions, the Government referred particularly to the proceedings of the First Congress of Solidarity and especially to the appeal to the peoples of other socialist countries, as well as the session of the Presidium of the National Committee of Solidarity held in Radom, in December 1981, when voices

[17] See above, para. 213.

were raised in favour of seizing power. It also mentioned the decisions taken by the National Committee of Solidarity at Gdansk, on 12 December 1981, which arranged for mass gatherings in public places on 17 December. Furthermore, Solidarity had not taken account of the economic situation of Poland and had, under the threat of strikes, secured concessions that would have led to an exceptionally dramatic economic decline.

485. On the other hand, the information provided by the complainants and by the international workers' organisations, as well as evidence given by several witnesses during the hearings, deny the assertions of the Government concerning the allegedly political attitude of Solidarity. According to these sources, there was nothing in the positions adopted by Solidarity, in its resolutions or in its declarations, to justify the assertion that the aims of the organisation went beyond the defence of the material and moral interests of the workers. Never, it was stated, had the organisation declared itself ready to call the system into question, to take power in the State, or to undertake terrorist or criminal activities. On the contrary, no proof, even indirect, had been furnished to show that Solidarity had held arms. It was true that the leaders of Solidarity, including its President, had recognised that the organisation had made mistakes and that, against the background of a bad economic situation, its activities might have hampered the action both of the Government and of the administration. However, according to the evidence given, the number of extremists was negligible in comparison with the total number of members. Moreover, the national and regional leaders and advisers had played an entirely restraining role during the disputes with the authorities and in the formulation of claims. As to the strikes called by Solidarity, the same sources indicated [18] that they had been only of short duration, and had related to trade union aims and that the organisation had adopted a responsible attitude by excluding, in its constitution, strikes in vital sectors and by refusing to take part in the destruction of the national economy.

486. The contradictory nature of these statements raises the question whether Solidarity had deviated from the aims and activities of a trade union organisation so far that it was no longer possible to consider it an organisation for furthering and defending the interests of workers, in accordance with the definition of Article 10 of Convention No. 87.

487. Although it must be understood in a broad sense, the notion of freedom of association is subject to certain limits. Having to be exercised essentially in the setting of a State, it cannot disregard rules concerning publicity and other rules aimed at enabling it to be practised normally. These rules, however, should not be such as to deprive freedom of association of its meaning or drain it of its substance. The double equilibrium and the double limitation of the scope of freedom of association and of the powers of the State have been defined by Article 8 of Convention No. 87, which states that "in exercising the rights provided for in this Convention, workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land", but in turn provides that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". These two rules cannot be separated.

488. The question of the political activity of trade unions is one of the most delicate aspects of the limits of their activities. It is significant in this respect to recall the preparatory work on Convention No. 87, which shows that the

[18] See above, para. 218.

Conference Committee that drafted the text did not accept a proposal to confine trade union activity to occupational matters.[19] Though it is obvious that the activities of trade union organisations must in the first place concern the occupational interests of their members, their activities cannot be confined to such matters in the strict and narrow sense. As the Committee of Experts on the Application of Conventions and Recommendations has remarked,[20] the choice of policies, particularly in economic affairs, has consequences for the situation of employees and workers more generally. Trade unions must therefore be able to express their views on the economic and social policy of the government, since – as the Committee of Experts has also pointed out in its general survey – the fundamental aim of the trade union movement is to ensure the development of the social and economic well-being of workers. Moreover, the new Polish trade union legislation of October 1982 itself defines the activities of trade unions very broadly.

489. There have, however, to be limits to the inevitable interplay between social and political questions. They have been stated in the resolution concerning the independence of the trade union movement, which was adopted by the International Labour Conference in 1952.[21] They concern both the action of governments and that of trade unions. On the one hand, governments should recognise that the value of the co-operation of trade unions in carrying out their economic and social policy rests to a large extent on the freedom and independence of the trade union movement, which the governments should not therefore attempt to transform into a political instrument. On the other hand, the trade unions should seek to ensure that any political action that they may think it proper to undertake to advance their economic and social objectives should not be of such a nature as to compromise the continuance of the trade union movement, irrespective of political changes in the country. This resolution has often been recalled since its adoption over 30 years ago.

490. For the trade unions to be able to play this part positively and constructively and for their contribution to be as useful and convincing as they would wish, their participation must take place in a climate of freedom and security. This means that, where trade unions feel that they do not enjoy the basic freedoms indispensable for carrying out their purposes, they should be entitled to demand the recognition and exercise of these freedoms and their claims should be considered to form part of legitimate trade union activity.

491. The Commission has given particular attention to examining the resolutions and decisions of Solidarity and the attitudes and statements of its leaders. In the opinion of the Commission, the proposals drawn up during the First Congress of Solidarity, held in Gdansk in October 1981, which laid down the programme of action of the organisation, constitute one of the basic factors to be taken into consideration in this connection. In the statement of these proposals, it was indicated that Solidarity was an organisation that allied the features of a trade union with those of a great social movement. The programme presented was "a long-term programme advancing from the settlement of immediate problems" and laid down among its general principles the necessity of reconstructing the country

[19] See International Labour Conference, 31st Session, 1948, *Record of Proceedings* (ILO, 1950), p. 476.

[20] International Labour Conference, 69th Session, 1983, *Freedom of association and collective bargaining: General survey by the Committee of Experts on the Application of Conventions and Recommendations* (ILO, 1983), para. 195.

[21] International Labour Conference, 35th Session, 1952, *Record of Proceedings* (ILO, 1953), p. 583.

and re-establishing the economy on the basis of democracy and the bringing about of great changes while respecting international alliances. Admittedly, several of the proposals adopted, particularly those for a "self-managing republic", embodied ideas that belonged to the strictly political sphere rather than to trade union matters and do not therefore normally find their place in the programme of a workers' organisation. It appears, however, that most of the points covered in the programme concerned economic policies, the protection of labour, social policy, the defence of certain civil liberties essential to trade union activities, and trade union affairs, all of which were questions falling within the normal activities of a workers' organisation furthering and defending the interests of its members, particularly in countries where the State is the principal employer. Doubtless, as can happen in any organisation, whether of a political nature or a trade union, the position taken by individual members and activists within Solidarity may have been excessive. They did not, however, in any way commit the trade union itself. The Commission has noted, moreover, that the Government, in its arguments to justify the measures taken against Solidarity, generally referred to the actions of elements or groups within the organisation rather to the activities of the union as a whole. Furthermore, the Commission has not received the slightest evidence of the possession of arms by groups within Solidarity, nor did the Government produce any such evidence during the earlier examination of the case by the Committee on Freedom of Association.

492. The suspension of trade union activities and the subsequent dissolution of the existing trade union organisations which deprived the workers of all the mechanisms which had ensured the defence of their interests, therefore constituted, in the opinion of the Commission, steps of an exceptional gravity having no common measure with the occasional excesses that may have occurred in the trade union movement. If the Government considered that the deterioration of the economic situation called for emergency measures, the most suitable way of settling the problems in the best interests of the workers and of the nation was certainly not the elimination of the trade union organisations, but rather frank and open negotiation among all the parties concerned to consider together the means of resolving the crisis. If it was found that certain members of the trade unions had committed excesses going beyond the limits of normal trade union activity, they could have been prosecuted under specific legal provisions and in accordance with ordinary judicial procedure, without involving the suspension and subsequent dissolution of an entire trade union movement.

493. Having examined the reasons underlying the measures taken by the authorities, the Commission must deal with the conformity – or non-conformity – with Convention No. 87 of the procedure followed in suspending and then dissolving the trade unions. The suspension of trade union activities was decreed on 13 December 1981 by the President of the Council of Ministers on the basis of the Decree of 12 December 1981 respecting martial law. It was thus a measure taken by administrative authority constituting an evident violation of Article 4 of Convention No. 87, which provides that "workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority".

494. The dissolution of the existing organisations was pronounced in two ways. Certain occupational organisations were dissolved by administrative authorities, including the Association of Polish Journalists on 20 March 1982, the Union of Polish Artists and Designers on 23 June 1983 and the Polish Writers' Union on 19 August 1983. The organisations registered as trade unions were dissolved under the Trade Union Act of 8 October 1982, their registration ceasing to be valid on the coming into force of the Act.

495. The measures of administrative dissolution taken against the above-mentioned organisations constitute unequivocably a violation of Article 4 of Convention No. 87.

496. As to the cancellation of the registration of the existing trade unions by virtue of the Trade Union Act, the Government has stated that it was unable to resort to a judicial procedure since this would have revived profound divisions in society. It emphasised that this measure did not constitute dissolution by administrative authority but a decision of the supreme legislative body and that there was therefore no breach of the guarantees provided for by Article 4 of the Convention, which covered only administrative decisions.

497. On this point, the Commission observes that, although it is true that Article 4 of the Convention refers only to measures taken by administrative authority, the fact remains that dissolution by legislative authority entails consequences that are just as irremediable as a definitive dissolution by administrative authority, since neither admits of appeal to independent bodies. The two procedures also have another point in common that is prejudicial to the organisations against which they are directed, since neither of them respects the rights of defence, which can be guaranteed only by the normal procedure before the courts.

498. Nevertheless, in the opinion of the Commission, the essential aspect of the problem is not so much that of the compatibility or incompatibility of dissolution by legislative authority with Article 4 of Convention No. 87. The essential point is that the principal consequence of the cancellation of the registration of the trade unions and of the absence of all possibility of re-establishing similar ones was to deprive the workers of the right to join the existing unions which had been freely and lawfully set up since 1980, and thus of joining organisations of their own choosing. It has to be concluded that the Act of 8 October 1982, by pronouncing the dissolution of the trade unions, infringed the guarantees provided for by Article 2 of Convention No. 87 respecting the free choice of organisations and at the same time violated Article 8, paragraph 2, of the Convention, under which the law of the land shall not be such as to impair, nor be applied so as to impair, the guarantees provided for by the Convention.[22]

499. The suspension and dissolution of the organisations have obviously raised the problem of administration and subsequent devolution of the funds and property of the organisation affected by these measures. Before the coming into force of the Trade Union Act, the property of the organisations, which, despite their brief existence, represented considerable sums and assets, were managed by administrators appointed by the authorities with the mission of ensuring their maintenance and preservation. After the cancellation of the registration of the trade unions, the property of enterprise unions was administered by the heads of the undertakings, who transferred them to the new trade unions set up under the new Act, as and when the statutory executive bodies of these unions came into existence. The property of the trade union organisations at a higher level than undertakings, that is to say the former central organisations and the respective branch unions, has been transferred to the newly established federations or are administered temporarily by a committee whose functions are administrative and consist in carrying out work that is indispensable for the preservation of the property in good condition, in accordance with its intended use.

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[22] See *Freedom of association and collective bargaining*, op. cit., para. 227.

500. The supervisory bodies of the ILO have enunciated a general principle concerning the devolution of the property of dissolved trade unions [23] in accordance with which this property should be temporarily placed in trust and finally distributed among the members of the dissolved organisation or transferred to the organisation that succeeds it. An important detail must, however, be insisted on respecting the meaning of the last expresson. As the Committee on Freedom of Association has emphasised,[24] the expression must not be taken to mean the unions that, in fact, simply take over from the dissolved unions, but rather those that pursue the aims for which the latter were voluntarily established and pursue them in the same spirit.

501. The question that arises in this connection, then, is whether the allocation of the assets, which is today definitive, that is to say that concerning trade unions in undertakings and federations, meets the criteria thus defined. In other words, it is necessary to determine whether the new trade unions constitute the successors to the workers' organisations which existed in Poland during the previous period.

502. If the elements making up trade union life in Poland today are examined, one of the main features, which was repeatedly underlined in the documents in the possession of the Commission and during the hearing of evidence, is that Solidarity is still in practice carrying on activities throughout the country on a continuing basis; these activities have not been disowned by the bodies or by most of the persons responsible for directing the organisation when it existed legally. The mere recognition of this fact shows that the leaders of Solidarity do not see their own reflection in the directions and tendencies that have taken shape in the new trade unions. These, therefore, cannot be considered to be the true successors to the unions that were formerly affiliated to Solidarity, which implies that the system for the devolution of the property of the dissolved organisations adopted by the Government is not in conformity with the principles of freedom of association in this respect.

503. A related problem concerning the property of the trade union organisations was raised in the information submitted to the Commission, namely that of the destruction of trade union property during the military or police operations carried out in the offices of the trade unions immediately after the proclamation of martial law. Although this question is not directly linked to the suspension of trade union activities, the Commission considers that it should be examined at this stage of its conclusions.

504. It was alleged several times, with reference to specific cases, that offices of organisations belonging to Solidarity had been laid waste by the security forces and that equipment, including printing machinery, office equipment and telephone exchanges, had been ransacked and destroyed.

505. In this connection, the Commission is bound to recall that the International Labour Conference in the resolution concerning trade union rights and their relation to civil liberties, adopted in 1970, considered that the right to the protection of the property of trade union organisations was one of the civil liberties essential for the normal exercise of trade union rights.[25] While trade unions, like other associations and private individuals, do not enjoy immunity against the searching of trade union premises, any action of this sort should be carried out only

[23] *Freedom of association and collective bargaining*, op. cit., para. 234.

[24] See Committee on Freedom of Association, 194th Report, Case No. 900, para. 258; 202nd Report, Case No. 823, para. 305; 209th Report, Case No. 763, para. 78.

[25] ILO: *Record of Proceedings*, International Labour Conference, 54th Session, Geneva, 1970, p. 735.

after the issue of a warrant by the ordinary judicial authority, when that authority is satisfied that solid grounds exist for supposing that the necessary evidence will be found for a prosecution under ordinary law, and provided that the search is confined to the purposes for which the warrant was issued. When these guarantees are not respected, there may be obvious abuses, particularly when the premises are ransacked and the property of the trade unions damaged or destroyed. The Commission is bound to record that such abuses occurred in Poland, in conflict with the standards of Convention No. 87, at least during the first days following the application of martial law.

Internment and conviction of leaders and members of Solidarity

506. The documents submitted to the Commission devote much space to the mass measures of arrest and detention taken against the leaders and members of Solidarity. The trade unionists who have been, or are, in detention can be divided into two main groups: those – the greater number – who were interned under martial law, because "their previous behaviour suggested that they would not respect law and order or that that they would carry on activities contrary to security or the defence of the State", and those who have been prosecuted in the courts and sentenced or whose trial is still going on, most of whom have been prosecuted for infringing the provisions of martial law or for attempting to overthrow the political system in force.

507. Measures of internment started as soon as martial law had been proclaimed, on 13 December 1981, and seem to have continued for several months, since, according to the information at the disposal of the Commission, internment orders were still being made in May and August 1982. It is extremely difficult, if not impossible, to give an exact number of those interned, for the information provided in this respect varies enormously. According to the data communciated by the Government in May 1982, 7,000 persons had been in the internment camps. Other information mentions a total number of internees of over 10,000. The duration of detention varied from person to person. Many of those who were arrested on 13 December 1981 left the camps only a year later. The first persons affected were the national and regional leaders, advisers and experts of Solidarity, then those taking part in strikes and their leaders, and lastly persons who had demonstrated in public. There were many releases in May and July 1982, and internments under martial law came to an end in December 1982. Various sources of information, however, have indicated that after this period active trade unionists – including many former internees – were placed in special military camps, where they were obliged to carry out non-military manual labour. According to the same sources, these measures affected at least 2,000 persons and continued until February 1983.

508. Another important element in the information furnished to the Commission relates to the conditions of internment prevailing in the camps. It was affirmed, by eye witnesses among others, that physical coercion and brutality – sometimes with lasting effects – had been used against the internees and that, in general, the conditions imposed on detainees were often very severe, particularly during the early days of internment. Special mention was made of a report prepared by the medical section of the Primate's Committee for aid to persons deprived of liberty, in which it was stated that of the persons whose situation had been examined (about 1,000) nearly two-thirds displayed health troubles and that over 100 required hospital treatment. According to certain information, the

complaints made by the detainees who had been victims of brutality had not always had the results expected since charges against those responsible had often been dropped and in certain cases the victims had even been subjected to reprisals. Lastly, the evidence of several former detainees referred to the psychological pressure that had been exerted on most of the internees to persuade them to sign declarations of loyalty, in which they undertook not to act against the interests of the country or even agreed to go into exile.

509. In the information that it provided in the procedure before the Committee on Freedom of Association, the Goverment stated mainly that the measures of internment were of a preventive nature and were intended to protect the existence of the nation and the security of the inhabitants. According to the Government, it had interned the extremist leaders of Solidarity who had imposed on the union an openly political course. The steps had been undertaken not because of the trade union activities of those concerned but because of their political actions contrary to the constitution of the trade union and to national legislation. With regard to the conditions of internment, the Government stated that the visits to the camps by the International Committee of the Red Cross had given rise to no comment by that Committee on the material conditions of detention or relations with the guards.

510. As to the second group of persons in detention, namely those who have been prosecuted in the courts and in some cases convicted, there too it is difficult to determine the exact number of persons concerned, since the figures vary greatly according to the source. Under the Decree respecting martial law, prison sentences of from three to ten years were provided for in cases of infringement of the provisions suspending the rights to strike and to demonstrate, or prohibiting the distribution of written matter, tracts, recordings or films. The sentences actually pronounced were often severe, since certain persons were sentenced to the maximum penalities and the Supreme Court sometimes even increased the sentences passed at first instance. The charges most often preferred concerned the printing and distribution of clandestine publications of the dissolved organisation Solidarity, the organisation of strikes and participation in them.

511. In July 1983, an Amnesty Act was promulgated which made provision for the complete remission of sentences for persons sentenced to periods of imprisonment of three years or less and also for women and minors, whatever the sentence passed on them. In respect of sentences for over three years, remission applied to only half the penalty. Criticisms were made of the scope of the Amnesty Act. For example, it was observed that a new similar offence led to the cancellation of the amnesty and that the amnesty covered only certain acts coming under the Decree respecting martial law and not, for example, crimes committed against interests of the State. According to the same criticisms, the limited nature of this amnesty made it possible to continue the trials that were being conducted against certain leaders of Solidarity and of the Workers' Self Defence Committee (KOR). These proceedings had been instituted although, under the "Abolition Act" adopted by the Government, no person could be sentenced for political activities before 13 December 1981 and it was impossible for the persons concerned to have carried out the activities of which they were accused since they had been interned since the proclamation of martial law.

512. It is appropriate to evaluate the facts concerning the internment and detention of leaders and members of trade unions in the light of the provisions of Article 3 of Convention No. 87. This article, after stating that workers' and employers'organisations shall have the right to draw up their constitutions and

rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, provides that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". Furthermore, the guarantees thus granted to trade union organisations can be effectively ensured only if a number of basic civil liberties are respected. The Commission must once more refer to the resolution, adopted without opposition by the International Labour Conference in 1970, concerning trade union rights and their relation to civil liberties.[26] In this resolution, which thus reflects the views of the parties to the Convention on the implications of the Convention, the International Labour Conference put particular emphasis on certain civil liberties defined in the Universal Declaration of Human Rights and in the Covenant on Civil and Political Rights, ratified by Poland, which it stressed as essential for the normal exercise of trade union rights. These include the right to freedom and security of persons and freedom from arbitrary arrest and detention; freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; freedom of assembly and the right to a fair trial by an independent and impartial tribunal.

513. It follows from all these elements that Convention No. 87 has neither the aim nor the effect of prohibiting a government from using its legitimate powers in respect of law and order when trade unionists commit crimes or offences covered by national law. The Convention, thus, does not create any immunity for the members of a trade union or their leaders and, in Article 8, it even provides that workers and their organisations, like other persons, shall respect the law of the land, although the law of the land, as has been pointed out above, shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. On the other hand, these rules do imply both that the public authorities cannot deprive trade unionists of their freedom for reasons related to their membership or their legitimate trade union activity or in order to put an end to such membership or activity and that, when trade unionists are accused of political or criminal offences that the government considers to be unrelated to their trade union activities, the persons in question shall have the benefit of normal judicial proceedings initiated at the earliest possible moment.

514. Since the arrest or conviction of trade unionists does not in itself constitute a violation of the Convention, the real grounds on which these measures were based must be sought and it is only if these measures were actually directed against trade union activities as such that there has been an infringement of the guarantees provided for by Convention No. 87. Furthermore, since the persons concerned are entitled to a presumption of innocence, it is incumbent on the government to show that the measures taken by it were not occasioned by the trade union activities of these persons.

515. If the statements of the Government on the grounds for the internments are considered, it will be seen that the Government confined itself to a general assertion that the measures were taken because of political activities and not because of trade union activities. No concrete evidence has been produced in support of this assertion. The Commission, however, is bound to note that the persons interned included the great majority of the national leaders and a large number of regional leaders of the organisation Solidarity. In the opinion of the Commission, it is difficult to conceive that so great a number of trade union leaders had undertaken activities likely to endanger the security or the defence of the

[26] See above, para. 505.

State, whereas, as the Commission has already observed, shortly before the proclamation of martial law, the Congress of the organisation had adopted a programme that was essentially of a trade union nature. It will further be observed that the immense majority of the trade unionists interned were not subjected to any subsequent judicial investigation. These various elements may justify the belief that one of the aims of the Government, in depriving the majority of the leaders of Solidarity of their freedom, was to suppress or prevent the activities and development of the trade union movement embodied by this organisation and that it therefore acted in violation of Article 3 of Convention No. 87.

516. As the Commission has already stated, the grounds for the sentences pronounced by the courts were the organisation of strikes and participation in the strikes or the distribution of publications of the dissolved organisation Solidarity. The question that arises in these cases is thus to determine whether such activities can be considered to be of a trade union nature.

517. Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view – which is shared by the Commission – that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. An absolute prohibition of strikes thus constitutes, in the view of the Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for [by the Convention]".

518. As to the printing and the distribution of publications, the Commission must point out that the right to the free expression of thought is of special importance as an integral part of the freedom to which trade union organisations are entitled. As the Committee on Freedom of Association has often stressed,[77] the right to express opinions through the press or otherwise is one of the essential elements of trade union rights. The prohibition of trade union publications and the conviction of trade unionists for infringing this prohibition cannot therefore be anything but a violation of the right of trade unions to organise their activities, as recognised in Article 3 of Convention No. 87.

519. With regard to the nature of the legal proceedings instituted, the Commission is bound to observe that it has little information on the way in which the trials of the trade unionists were conducted. Although certain evidence given during the hearings alleged the failure to respect certain fundamental rights in the judicial field such as the right of defence, the Commission cannot, in view of the small number of concrete cases brought to its attention, conclude that, generally speaking, the guarantees of normal judicial procedure were systematically disregarded.

520. Another question concerning the detentions which the Commission must examine is that of the conditions imposed on the detainees and, in particular, the most serious allegation of all, the ill-treatment said to have been inflicted on them. The information from the Government available to the Commission on this point was extremely limited. However, from the many statements made during the hearings and the substantial documentation submitted to it on this point, the Commission is led to believe that the standard minimum rules for the treatment of

[77] See ILO: *Freedom of Association – Digest of decisions of the Freedom of Association Committee of the Governing Body of the ILO* (Geneva, 2nd edition, 1976), para. 399.

prisoners[38] were not always observed in Poland during the period of martial law. This was true, in particular, of certain internment camps, where the rules regarding detention premises, food, physical exercise, contact with the outside world and the imposition of forced labour on persons detained and placed in the military camps seem to have been largely disregarded. The Commission has even noted from direct evidence that physical or moral pressure exerted during or after detention had been decisive in making several persons decide to leave the country. Recent information provided by the complainants again refers to ill-treatment of detainees. Lastly, as is clear from certain cases mentioned in the foregoing analysis, the ill-treatment of certain detainees does not seem to have led to the imposition of sufficiently severe and dissuasive penalties upon the persons responsible for these acts to prevent the renewal of such practices.

Deaths of trade union members and leaders

521. The information available to the Commission shows that a large number of active and ordinary members of trade unions died during the period when martial law was in force. Their deaths occurred during strikes, particularly in December 1981, and during demonstrations organised by Solidarity during 1982. Furthermore, the violence to which trade unionists were subjected after arrest is said to have led to the death of some of them. In all, according to the complainants, the number of persons whose death can be attributed to the security forces comes to over 60.

522. Although the list of persons alleged to have died violently was transmitted to the Government for observations, it made no comment on the matter. The only elements of information from the authorities in the possession of the Commission concern the events at the Wujek mine that occurred in December 1981, when eight miners died. An investigation into the case by the military prosecutor's office concluded that the militia had acted in self-defence and no charge was therefore laid against the security forces.

523. The voluminous and very detailed information obtained on the various cases of violent deaths, and in particular, on the circumstances of deaths which occurred after arrest leads to the conclusion that not only trade union rights but also rights connected with life and security of persons were violated in Poland while martial law was in force. In particular, there are no indications, according to the information available to the Commission, that the deaths of trade unionists have been the subject of thorough, independent and impartial inquiries to establish the facts and to determine responsibility so as to open the way to legal proceedings for the punishment of the persons found guilty.

Measures of anti-union discrimination

524. The Commission had before it allegations concerning measures of anti-union discrimination against leaders and members of Solidarity. The trade unionists in question were said to have suffered dismissal and other acts of discrimination such as refusal of employment, re-employment on less favourable conditions, reductions of wages, disciplinary sanctions, changes of workplace, changes of job, placing on blacklists or refusal to reinstate in the worker's job.

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[38] Adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by resolutions of 1957 and 1977. See *Human rights – A compilation of international instruments* (New York, United Nations, 1983), pp. 75-82.

Furthermore, "verification procedures" on the ideological and political attitudes of the workers, carried out in certain administrations or undertakings, are said to have resulted in dismissals or the signature of declarations of loyalty to the authorities.

525. According to the information available, tens of thousands of workers were dismissed for the mere fact of belonging to Solidarity, for having refused to sign declarations of loyalty or for having taken part in a strike or demonstration.

526. Precise details on the number of dismissals in workplaces mentioned by name were furnished to the Commission. These sources of information show that, although dismissals occurred mainly in large undertakings during the first months of martial law, similar measures were still being taken during the second half of 1982 and even after the suspension and the lifting of martial law.

527. These dismissals seem to have affected a very wide range of persons, in terms of their occupational and trade union functions and the branches of activity in which they worked. Such measures, however, were applied frequently to workers who had held positions of responsibility in Solidarity, particularly former full-time officers of the organisation or trade union leaders who had been interned. According to the documents received, in the public administration the sectors most affected were the judiciary, teaching and radio and television services.

528. There is complete contradiction between the explanations given by the complainants and those given by the authorities concerning the reasons for the measures in question. For the former, they clearly constituted acts of anti-union discrimination, whereas for the latter, they were taken above all in response to economic requirements.

529. The Labour Code provides for protection against improper dismissals. Thus, the decision to dismiss must be submitted for the opinion of the works trade union committee, and members of works committees and trade union representatives cannot normally be dismissed. However, the information available to the Commission shows that the Supreme Court had considered that these protective measures could not be applied while trade union activities were suspended. Moreover, dismissals in militarised undertakings were not subject to review by the disciplinary and judicial authorities usually competent in this field. Certain documents even mentioned pressure exerted on judges so that decisions should be given against workers and pressure on managers of undertakings to appeal where consent to dismissal had been refused.[29] It was also stated that decisions to reinstate given by the courts were not put into effect. Lastly, the adoption of laws in October 1982 (Act respecting persons evading work) and in July 1983 (Act respecting special legal provisions for dealing with the social and economic crisis) had consequences for the situation of workers who had been dismissed, such as the placing on a register of "social parasitism" of any person not registered as seeking employment who had been without employment for three months, with the possibility of being called up for work in the public interest[30] and the re-employment at the lowest wage of workers who had been dismissed without notice or had resigned.

530. In the observations which the Government submitted to the Committee on Freedom of Association concerning protection against dismissal, it maintained that the guarantees provided by the legislation were extensive, in respect both of the grounds for dismissal and of the appeals procedures open to the workers.[31]

[29] See above, paras. 375 and 376.
[30] See above, para. 382.
[31] See above, para. 390.

These guarantees remained applicable, even during the period of martial law, with the exception of militarised undertakings, where certain restrictions had been introduced. Referring to the many cases in which workers had appealed, the Government stated that in 20 per cent of these cases the competent bodies had ordered the reinstatement of the workers concerned on the grounds that the dismissals had not been justified.

531. The Commission must state its position on the allegations of anti-union discrimination in the light of Article 1 of Convention No. 98, which provides, among other things, that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". The Commission must therefore determine whether the grounds on which the measures were taken against the workers were connected with the trade union membership and activity of the persons concerned and, if so, whether the guarantees and remedies provided for in law and practice may be considered adequate.

532. On the first point, the Commission obviously cannot affirm, on the basis of the information received, that all the dismissals or other measures taken during the period in question constituted acts of anti-union discrimination. The Commission cannot overlook the particularly difficult circumstances faced by the Polish economy at present, which undoubtedly justify certain measures of adaptation. Nevertheless, the extent of the dismissals that took place and above all the large number of active members and leaders of Solidarity who were affected by these measures show that, in many of the cases, the trade union activities of the persons concerned must have been a decisive factor in the dismissals.

533. With regard to the protection provided for workers against acts of anti-union discrimination, it is necessary to make sure that legislative provisions exist to lay down the requisite guarantees and also that they are accompanied by effective procedures for their application in practice. It is here that appears the full importance of Article 3 of Convention No. 98, under which machinery appropriate to national conditions must be established, where necessary, for the purpose of ensuring respect for the right to organise.

534. It appears that it was not possible, at least while martial law was in force, to give full practical effect to the guarantees laid down by the Labour Code for protection against dismissal: first, a considerable number of workers employed in undertakings essential to the economy were no longer covered by the relevant provisions and, secondly, some of the guarantees could no longer be applied because trade union activities were suspended. In addition, some information suggests that the bodies responsible for examining the appeals submitted were not always able to take decisions with all the independence desirable.[32] The Commission must therefore conclude that the protection afforded the workers does not appear to have been sufficient in relation to Article 1 of Convention No. 98.

Trade union legislation

535. Trade union activities in Poland are now governed by the Trade Union Act of 8 October 1982, the Act respecting farmers' socio-occupational organisations adopted the same day, and an Act of 16 September 1982 respecting the principles governing the representation of persons employed by the State. This legislation has been supplemented by several decrees and decisions of the Council of State and orders of the Council of Ministers.

536. As the Commission has already pointed out, a few days before the adoption of the Act the Government asked the International Labour Office for a

[32] See above, para. 375.

legal opinion on the conformity of its provisions with international labour standards. The Office then prepared written comments, some of which were taken into consideration by the Diet during the final discussion on the Bill.[33]

537. Generally speaking, the Commission has noted that the Trade Union Act, from the point of view of giving effect to the relevant Conventions of the ILO, contains important improvements in relation to the 1949 Act, which governed trade union activities before September 1980.[34] In particular, the new Act no longer refers to the obligation to register with a central trade union organisation, a requirement in the former Act which had been the subject of repeated comments by the Committee of Experts on the Application of Conventions and Recommendations. Certain provisions of the trade union legislation, however, call for the following comments.

Right of workers, without distinction whatsoever, to establish organisations of their own choosing without previous authorisation

538. Under section 12 of the Act, the right to organise is not granted to officials of the prison service. The Government has stated that this class of personnel constitutes a militarised formation whose system of ranks and discipline is similar to that of the army. It thus possesses, according to the Government, characteristics identical to those of the militia and must be regarded in the same way. The Commission refers, in particular, to the 1983 General Survey of the Committee of Experts on the Application of Conventions and Recommendations,[35] and considers that the functions exercised by this class of public servants should not normally justify their exclusion from the right to organise on the basis of Article 9 of the Convention, which provides restrictively, that "the extent to which the guarantees provided for in this Convention can apply to the armed forces and the police shall be determined by national laws or regulations".

539. Section 19 (4) provides for the cancellation of registration of a trade union if the number of members is below 50 for three months. In the opinion of the Commission, the minimum number of members imposed in this way may hamper the establishment and maintenance of organisations, particularly in small undertakings, contrary to Article 2 of Convention No. 87. The Commission notes in this connection that an amendment introduced in April 1984 suspends the application of this provision until the end of 1985.

540. Under section 19 (2), a court may refuse to register a union if the content of its rules indicates that the organisation is not a trade union within the meaning of the Act or the provisions of the rules are not in accordance with the requirements of the Act. This provision raises the question whether such a possibility of refusing to register may be considered to imply a previous authorisation within the meaning of Article 2 of the Convention. It was specified in the preparatory work of the Convention[36] that States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations. The existence of national legislation concerning the establishment of the organisations is thus not in itself incompatible with the provisions of the Convention, provided that it does not amount to previous authorisation and that it does not constitute an obstacle leading in effect to a prohibition.

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[33] See above, para. 143.

[34] See above, paras. 121 to 124.

[35] See *Freedom of association and collective bargaining*, op. cit., para. 87.

[36] ILO: *Record of Proceedings*, International Labour Conference, 31st Session, 1948, first report of the Committee on Freedom of Association and Industrial Relations, p. 477.

541. The Trade Union Act lays down as a simple formality the filing of the rules of the organisation and their examination by the judicial authorities, with the possibility of an appeal to the Supreme Court. According to the Act, the sole purpose of the supervision exercised by the judicial authorities seems to be that of ensuring conformity of the rules with the legislation. However, an order by the Council of Ministers dated 15 October 1982 specifies, in section 12, that the court may not order the registration of a trade union if, amongst other things, "this is incompatible with the provisions in force or the prevailing situation". In view of this last factor, the courts are vested with broad powers of appreciation going beyond those of a simple verification of legality. In these circumstances, the conformity of the laws and regulations on the registration of trade unions will largely depend on the way in which the relevant provisions are interpreted and applied. It would thus be more in conformity with Convention No. 87 to eliminate this provision of the Order, under which the courts have the power to refuse the registration of a trade union organisation for reasons relating to "the prevailing situation".

542. Under the transitional provisions of the Act (section 53 (4)), only one trade union organisation may operate in an undertaking until 31 December 1984. Under the Act of 21 July 1983 respecting special legal provisions for dealing with the social and economic crisis, this period has been extended to the time when the application of the Act is to be examined by the Council of States, three years after its coming into force, that is to say, October 1985. In addition, on the basis of this transitional provision, the Council of State has adopted a decision laying down the principles and procedure for establishing trade union organisations in undertakings. Section 6 of this decision provides that, where there is more than one application for registration, the court shall propose to the constituent committees an arrangement and the filing of a joint application. If the joint application is not presented, the court can either refuse to register the trade unions or register the union that has stated its agreement to an arrangement and the filing of a joint application for registration of a single trade union.

543. These provisions, by imposing a single-trade-union system in the undertaking, conflict with Article 2 of the Convention, according to which workers have the right to establish organisations of their own choosing without previous authorisation. As the Committee of Experts on the Application of Conventions and Recommendations has often pointed out,[37] although the Convention clearly does not aim to make trade union pluralism compulsory, it requires that pluralism must at least be possible in every case. The Commission must also express its concern that the Government has extended the waiting period initially laid down in the Trade Union Act and that there is uncertainty about a return to the possibility of trade union pluralism, which will depend on the examination of the application of the legislation to be carried out by the Council of State.

544. Still in connection with right of workers to establish organisations of their own choosing, the Commission has examined the wording of section 33 (2) of the Act respecting farmers' socio-occupational organisations, which imposes a national federation of farmers. It has also considered the statements made by the Government in this connection, to the effect that the federation is not of a monopolistic character since the branch unions for farmers specialised in a given sphere do not join this national trade union organisation; nor do many other rural social organisations.[38] The Commission must, however, observe that it is impossible

[37] See, for example, *Freedom of association and collective bargaining*, para. 148.
[38] See above, para. 431.

ible, under this Act, for national farmers' federations to be established other than that expressly designated in section 33 (2). There is thus clearly a single-trade-union system imposed at the highest level of representation of farmers, which is contrary to Article 2 of the Convention.

545. Lastly, the Commission notes that section 40 of the Act respecting the representation of workers in the employment of the State provides that these workers are entitled to join the union of workers in the administration of the State. If, as the wording suggests, this provision excluded the possibility of trade union pluralism for workers of a given class, it too would constitute a violation of Article 2 of the Convention.

546. With regard to trade union structure, section 10 (2) of the Trade Union Act lays down that a trade union shall comprise the workers employed in a given field of work, type of employment or occupation. To determine whether this provision is in conformity with the right of workers to establish organisations of their own choosing or not, one must examine whether the basic organisations covered by this section can freely join federations and confederations in the form and manner which the workers consider most appropriate.

547. In this connection, reference must be made to section 20 of the Act, under which trade unions have the right to establish associations and inter-union organisations. This provision seems to cover federations and confederations and does not impose any special conditions for their establishment, subject to the indications in paragraphs 559 and 560 below. There may, however, remain a doubt concerning the possibility, under this section, of forming associations of trade unions on a regional basis. The conditions laid down in section 10 (2) of the Act respecting the trade union structure of basic organisations would thus be in conformity with Article 2 of Convention No. 87 in so far as regional associations of trade unions could be formed.

Right of trade unions to draw up their constitutions and rules

548. Under section 3 of the Act, the rules of a trade union must be in conformity with the Constitution of the Polish People's Republic and the other laws. In particular, trade unions must observe the principles of social ownership of the means of production and recognise the guiding role of the Polish United Workers' Party (PUWP), as determined by the national Constitution, in the construction of socialism and the constitutional principles of the foreign policy of Poland.

549. The Commission has had to examine these provisions in relation to Article 8 of Convention No. 87, under which workers and their organisations, like other persons or organised collectivities, must respect the law of the land (paragraph 1), while in turn the law of the land must not be such as to impair, nor be so applied as to impair, the guarantees provided for in the Convention (paragraph 2).

550. It is therefore necessary to determine, firstly, whether the provisions in the Constitution referred to by the Trade Union Act infringe the Convention. In the opinion of the Commission, these provisions are of a general nature and are not aimed at trade union activities as such. They thus fall within the scope of Article 8 of the Convention.

551. Secondly, it is necessary to consider whether section 3 of the Act may affect the right of trade unions to organise their activities, as recognised by Article 3 of the Convention. The Commission observes that the legal provision in question

refers to the recognition of the guiding role of the PUWP in society as a whole and not in trade union activity as such. Taking all these factors into account, the Commission considers that section 3 of the Act cannot be taken to impair the guarantees laid down in the Convention, provided that, as the wording seems to indicate, this provision is interpreted as concerning the general constitutional and political order of the country and not trade union activity itself. The attention of the Government is therefore called to the importance which the practical application of this provision will have for the purpose of assessing its conformity with Convention No. 87.

Right of trade unions to organise their activities – right to strike

552. The Act, in section 36 (1), recognises the right of trade unions to organise strikes, but fixes a number of conditions for the exercise of this right and prohibits it in certain sectors of activity.

553. The Commission must examine these provisions to determine whether they impose restrictions which call in question the right to strike and, consequently, the right of trade unions to organise their activities (Article 3 of Convention No. 87) for furthering and defending the interests of their members (Article 10 of the same Convention). It has observed that some of these provisions could constitute serious restrictions.

554. It is necessary to refer, first, to the conditions for the calling of a strike laid down by section 38 (1) which requires that the decision shall be approved by the majority of the workers concerned and not merely by the majority of those voting. The Commission considers that a majority of this kind may be difficult to reach, particularly in large undertakings, and jeopardise the possibility of the workers concerned to call a strike. Section 38 (1) also requires the prior agreement of the higher body of the trade union, that is to say, apparently, the federation to which the organisation is affiliated. The Commission considers that such a requirement, laid down by legislation, imposes an undue restriction on the right of trade unions to organise their activities.

555. Second, the Commission observes that section 40 of the Act establishes a very long list of essential services in which strikes are prohibited. It feels bound to refer in this regard to the views expressed by ILO supervisory bodies that the prohibition of strikes should be confined to essential services in the strict sense, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population.

556. The Commission must also point out the severity of the penalties laid down for the organisers of strikes, going as far as imprisonment for one year for infringement of the provisions on the right to strike (section 47 of the Act).

557. The Commission considers that the provisions concerning procedures of negotiation, conciliation and arbitration that must be exhausted before a strike can be called do not require special comment, since the final arbitration award is not of a binding nature, either party being entitled to declare, before the start of the procedure, that the award will not bind it (section 35 (5) of the Act).

Right to establish federations and confederations

558. As the Commission has already pointed out,[39] trade unions have the right, under section 20 of the Act, to establish inter-union associations and organisations.

[39] See above, para. 547.

This provision gives effect to Article 5 of Convention No. 87, under which workers' organisations have the right to establish federations and confederations. However, if full effect is to be given to this Article, section 20 of the Act will have to be so applied that trade unions can form associations not only by branch of activity but also by region.

559. Under the transitional provisions of the Act (section 53), activities might be resumed after 31 December 1983 by national trade union organisations and after 31 December 1984 by inter-union associations and organisations. Until these dates, the Act thus prohibited the establishment of federations and confederations mentioned above.[40] It is true that the Council of State, by a decision dated 12 April 1983, advanced the date for the establishment of federations and that several organisations of this type are operating today. However, it remains impossible to establish confederations before the end of 1984, and such a prohibition is in conflict with Article 5 of Convention No. 87.

560. The Commission also observes that, under section 20, the provisions of the Act apply, *mutatis mutandis*, to inter-union associations and organisations. The comments made by it concerning basic unions, particularly concerning the single-trade-union system, thus apply also to federations and confederations.

Right to collective bargaining

561. Under section 23 of the Act, trade unions have the right to conclude collective agreements at the national level. The Government has stated that this provision does not exclude the possibility of negotiation at other levels, particularly in view of the autonomy of undertakings resulting from the economic reforms. The Commission considers that, if this is so, the Act should unequivocally recognise the right to collective bargaining at all levels of economic activity (undertaking, branch of activity, inter-occupational), so as to give full effect to Article 4 of Convention No. 98. The possibility, under a new Act adopted in January 1984, of concluding wages agreements under certain conditions at the level of the undertaking may constitute a first step towards this full recognition of the right to collective bargaining.

Dissolution of trade unions

562. Under sections 19 (4) and 48 of the Trade Union Act, the courts may, in the event of violation of the provisions of the Act, order the deletion from the register of the trade union concerned. These provisions, which prescribe recourse to a judicial procedure for the dissolution of trade unions, do not call for comments, subject to the remarks made above on section 19 (4) of the Act.[41]

563. The documents submitted to the Commission refer to the dissolution of the existing trade unions by virtue of section 52 of the Act and to the transfer of the property of the dissolved organisation under section 54 of the Act. The Commission refers to its conclusions on these points in paragraphs 482 to 505 above.

Trade union life today

564. Following the adoption of the new trade union legislation, groups to found new trade unions began to form and works unions have been registered by

[40] See above, para. 547.
[41] See above, para. 539.

the courts. According to data in the possession of the Commission, these unions today comprise over 4 million workers, about one-third of whom are pensioners, out of the 17 million, including 3 million pensioners, in a position to join unions.[42] National structures by industrial branch have also been set up and have begun to operate. A meeting bringing together the chairmen of the trade union federations, moreover, was organised in January 1984 to create a body to co-ordinate the national policy of the trade unions.

565. In its most recent report on the application of Convention No. 87, the Government has set forth the four basic principles on which trade union life in Poland is founded today: independence, which implies the absence of control by the administration; self-management, that is to say the right to determine and to carry on the activities of the union freely; voluntary membership of the unions by workers; democracy, respect for which is ensured by the appointment of the governing bodies of the unions by election.

566. According to the complainants and the witnesses whom they presented, the establishment of the legal trade union structure has not prevented Solidarity from continuing to carry on activities for defending the interests of the workers. The organisation is said to exist in every region of Poland and 1.2 million persons are stated still to be active members. Its activities appear to be mainly social and connected with the defence of human rights and it produces a considerable number of publications.

567. The independence of the trade unions established under the new Act has been called in question several times in the documents submitted to the Commission and in the evidence obtained during the hearings. It has been stated, in particular, that the Polish United Workers' Party (PUWP) and even the army have played a decisive role in their formation and that their constitutions were prepared on the basis of model constitutions prepared by a committee appointed by the Council of State. It was said that these unions did not enjoy the confidence of the population and that the number of their members was due to the inducements – such as wage increases and various advantages – that had been offered to members and to the dissuasive measures – such as dismissals or penalties – with which workers refusing to join were threatened.

568. The conflicting nature of the information available to the Commission does not enable it to make a clear assessment of the representative character of the new trade unions or of their independence from the undertakings and the public authorities. It regrets this all the more as these matters constitute an essential factor for evaluating the present state of trade union life by reason of the monopoly under the law possessed by the trade unions today.

569. There are, however, certain factors that can be taken into consideration to determine whether the new trade unions fully meet the aspirations of the world of labour. On the one hand, these trade unions, by obtaining a large number of members, have no doubt acquired some degree of representativity. On the other hand, it is obvious that a large number of workers continue to give their confidence to Solidarity and even to belong to it, despite the difficulties and risks to which participation in a dissolved organisation gives rise. Lastly, the Commission cannot disregard the fact that the principal leaders of all the national organisations existing before the introduction of martial law published a joint declaration supporting the principles of the independence of organisations and trade union pluralism. All these factors suggest that part of the working population does not identify itself

[42] See above, paras. 413 and 441.

with the newly established trade union structure and that the present situation does not therefore offer workers the possibility of joining organisations of their own choosing, as required by Article 2 of Convention No. 87.

* * *

Recommendations

570. Having recorded its findings on the questions submitted to it and with a view to action to remedy the unsatisfactory application of Conventions Nos. 87 and 98 noted in its conclusions, the Commission makes the following recommendations, which are resolutely directed towards the future.

571. Considering that the degree of independence enjoyed by the trade union organisations depends largely on the recognition and observance in law and practice of basic civil liberties, the Commission considers that it must in the first place make certain recommendations concerning the right to freedom and the right to security of the person.

572. The Commission has observed that, despite the adoption of the Amnesty Act, trade union leaders and members are still being prosecuted before the court or remain in detention after conviction. In order to calm feelings and to create the climate of tranquillity that is indispensable to the renewal of a genuine trade union life, the Commission recommends that measures should be taken by the Government without delay to discontinue the legal proceedings against trade union leaders and to end the detention of persons who have been sentenced for trade union activities such as participation in strikes or demonstrations or the distribution of publications.

573. With regard to the violent deaths of workers, the Commission recommends that impartial and independent inquiries into these events be undertaken in order to establish the facts, to determine responsibilities and to punish any person found guilty. The Commission is convinced that it is only by this course that the recurrence of incidents as tragic as these may be avoided.

574. With regard to the other aspects of the case referred to it, the Commission finds it necessary to make recommendations on three points: anti-union discrimination, the trade union legislation and, lastly, the transfer of the assets of dissolved organisations.

575. On the first point, the Commission, concerned by the large number of dismissals of leaders and active members of trade unions since the proclamation of martial law, recommends that the situation of those dismissed be re-examined in conditions of complete independence and impartiality.

576. As to the trade union legislation, the Commission, referring to the conclusions set forth above in paragraphs 535 to 563, recommends the Government to amend in the near future the laws and regulations issued under them that are in force with a view to ensuring the clear and full recognition of the following rights established by Conventions Nos. 87 and 98:

(1) the right of workers, without distinction whatsoever (including public servants), to establish trade unions;

(2) the right of workers to establish organisations of their own choosing; the recognition of this right implies the re-establishment in practice of the possibility of trade union pluralism at every level: undertaking, branch of activity, regional and inter-occupational;

(3) the right of basic unions and federations to associate in confederations;

(4) the right of trade unions to conclude collective agreements at all levels;

(5) the right of the unions to organise their activities, which implies the elimination of the unduly strict limitations imposed upon the exercise of the right to strike.

The Commission also recommends the Government to ensure that the provisions of the legislation (particularly those on the recognition of the guiding role of the Polish United Workers' Party, the registration of organisations and the contents of their rules), whose conformity with Convention No. 87 largely depends upon their implementation in practice, are applied in a manner fully respecting the principles contained in the Convention.

577. Lastly, with regard to the transfer of the assets of the dissolved trade union organisations, the Commission considers that this problem must be solved with regard to the situation of trade union pluralism that existed before the proclamation of martial law. In order that the principles of freedom of association may be respected in this connection, the organisations that are to receive the assets of the dissolved unions can be designated only when trade union pluralism can be effectively exercised in practice. The Commission therefore recommends the Government, within this perspective, to study a system for the devolution of assets which would make it possible to attribute them to the true successors of the dissolved organisations.

578. In conclusion and in view of the above considerations, the Commission recommends that the Government of Poland, in its reports submitted under article 22 of the Constitution of the ILO on the application of Conventions Nos. 87 and 98, should regularly indicate the measures taken during each period under consideration, both in law and in practice, to give effect to the recommendations set forth above and also to those of a more general nature contained in the following paragraphs. The Commission does not consider it possible to fix the exact dates at which such information should be provided: the period during which such a procedure will remain necessary depends on the rate of progress made, and the Commission considers it preferable to leave this question to the Committee of Experts on the Application of Conventions and Recommendations.

579. Article 28 of the Constitution of the ILO provides that the Commission of Inquiry, in stating its findings and recommendations, shall indicate the time within which the measures that it recommends should be taken. It is obvious that the situation in which Poland finds itself cannot be put right from one day to the next. Among the measures recommended by the Commission there are some that require time for reflection, for consultation and sometimes also for putting into effect. Yet some of them are so urgent that the Committee of Experts on the Application of Conventions and Recommendations at its March 1985 session should be enabled to report on the action taken by the Government in the fields concerned during the months immediately preceding that session.

* * *

580. The various recommendations made above must be considered in relation to the general situation prevailing in Poland and they can find meaning only so far as this situation develops in such a way as to make it possible to put them into effect.

581. The major events that have occurred in Poland during the past four years are to a great extent linked to the trade union situation of the country. They have been briefly outlined at the beginning of the present report.[43]

[43] See above, Chapter 3.

582. These events have led to a situation today which no one can consider normal and even less to be satisfactory.

583. It is true that, after a period of great tension, some degree of tranquillity has been secured. A Trade Union Act was adopted on 8 October 1982, martial law was suspended and then lifted, an Amnesty Act was adopted on 21 July 1983 and most of the persons in detention have been released. Some trade unions have been formed, but their representative character is obviously limited.

584. Tensions and difficulties, however, are far from having disappeared. Certain persons, in particular former trade unionists, are still under arrest and in detention, severe sentences have been pronounced and civil liberties have not been fully re-established. The Trade Union Act, as has been seen, although it introduces some progress on certain points, has serious limitations.[44] In particular, the right of workers freely to establish the trade unions of their own choosing, which presupposes that pluralism is legally possible and which was recognised – in accordance with Convention No. 87, ratified by Poland – between September 1980 and December 1981, has not been reaffirmed by the texts adopted so far.[45] The present trade union legislation is still, in some respects, provisional and it is not yet possible to foresee the form that it will assume during the coming months and years. The Government has not indicated its intentions and the Commission has been unable to observe any pointers in this connection. The general economic situation continues to be marked by serious difficulties. Tension remains in the country and a great part of the population seems to remain attached to the trade union principles and organisation that were recognised between September 1980 and December 1981.

585. A determined effort must be made by all to break the deadlock in which the country finds itself. The problems have arisen because the activities of the Solidarity trade union movement appeared to the public authorities contrary to the interests of the country and to the normal running of the established political system in Poland. The Commission is aware that it may be difficult to reconcile trade union pluralism with a political system of a single or dominant party. It is nevertheless convinced that it should be possible to achieve a situation which would ensure the effective observance of the Conventions on freedom of association without jeopardising the general interest or the conceptions underlying the regime of the country. The standards respecting freedom of association are universal in scope by their very purpose and this is confirmed by the wide range of ratifications which they have received from countries with the most varied political regimes. It should thus be possible for these standards to be observed irrespective of the political regime, as was shown, moreover, by the law and practice in Poland not long ago.

586. The question does, however, raise various difficulties, which the Government should endeavour to resolve, a task that should not prove impossible. In the present case, the Commission is bound to observe that the questions of freedom of association which it was called upon to examine depend largely on the general evolution of the country.

587. If Conventions Nos. 87 and 98 are to be fully observed in Poland, it is obviously indispensable that the legislation be amended to bring it into conformity with these texts.[46] The fulfilment of this condition, though necessary, is not enough.

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[44] See above, paras. 535-563.
[45] See above, paras. 542-545.
[46] See above, para. 576.

The effective application of the Conventions on freedom of association is not merely a matter of texts. It also depends to a large extent on the general context, on the relations established between workers, employers and the public authorities and on the climate of freedom, dialogue and mutual respect in which these relations can be established. Considerable progress undoubtedly remains to be achieved in this respect.

588. The Commission considers that one of the first measures which it would be desirable to take in this connection is the initiation of free and unprejudiced exchanges of views between the public authorities and the representatives of the various trade union trends that have arisen at various dates in the country in recent years, with a view to restoring the harmony and agreement necessary for the resumption of trade union activity based on the standards of the ILO Conventions. Such harmony would be beneficial not only from the point of view of the trade union situation. It would be essential, more generally, to an effective recovery of economic activity and a normalisation of the general conditions of life in the country.

589. Although this general recommendation is addressed in the first place to the Government, since it holds power, the Commission considers that the leaders of the various trade union trends, too, should make a parallel effort to restore national understanding, devoting their entire efforts to the operation of a normal trade union system and helping, by their action, to bring the country out of its present difficulties. In other words, it is through an open and constructive dialogue between the various representative elements in the country, born of the desire to find together the solutions required by the higher interests of the State as well as by the interests of the workers, and based on respect for the international obligations of Poland, that the trade union situation can really evolve towards normality.

590. A development of this kind, moreover, can take place only in a general climate of confidence and freedom. Such a climate presupposes and requires a general effort of understanding and agreement on the part of all concerned. The first measures taken by the Government, in suspendeding martial law and releasing most of the persons in detention, could be a move in this direction if they were followed by broad and generous measures for the release and amnesty of all workers still in prison or already sentenced on account of the recent events, by the abolition of all exceptional measures and by the full restoration of freedom of expression and of assembly. It would be of the greatest importance for the full observance of the Conventions on freedom of association if, as provided by the Final Act of the Conference on Security and Co-operation in Europe, adopted at Helsinki in 1975, the Government of Poland, which subscribed to that Act, were to "promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development".

591. Normal trade union life presupposes, among other things, the elimination of all feeling of constraint among workers and the creation of an atmosphere in which they do not feel restricted. The public authorities should keep in mind, after the period of tension that the country has gone through, the necessity of fully re-establishing the civil liberties set forth in the International Labour Conference resolution of 1970 and in the Covenant on Civil and Political Rights, ratified by Poland, particularly in respect of protection against arbitrary arrest and freedom of opinion and expression so far as these are necessary to enable workers' and employers' organisations to further and defend the interests of their members.

592. From this general point of view also, the Commission is convinced that any gesture by the public authorities in this direction could only meet with the good will and co-operation of the various trade union trends and in general of the whole country.

593. There are moments in the life of a nation when the choice between division, social tension and even confrontation on the one hand and, on the other, reconciliation and harmony stands out clearly and there should be no room for doubt. The way recommended by the Commission is certainly not the easiest. It does seem, however, that it is the way desired by the Polish people. Admittedly, it may not be possible to embark upon this way from one day to the next. It is nevertheless the only one by which Poland can at the same time ensure the observance of the Conventions on freedom of association, recover its unity and turn a new page in its long and often painful history.

Geneva, 2 May 1984.

(Signed) Nicolas Valticos
Chairman

Andrés Aguilar

Jean-François Aubert

In submitting this report, the members of the Commission wish to thank Mr. Francis Blanchard, Director-General of the ILO, and the staff of the ILO services concerned for the support they have unstintingly given at the various stages of the procedure. The members of the Commission wish in particular to stress their keen appreciation for the work carried out and the assistance provided by the members of the secretariat placed at their disposal, in particular Mr. B. Gernigon, and also Mr. K. T. Samson, Mrs. J. Ancel-Lenners and Mrs. A. J. Pouyat-Donsimoni, Miss M. Chuard and Mrs. Y. Piriou. The quantity and the quality of the work carried out and the keen sense of duty displayed by the members of the secretariat have earned them the deep gratitude of the Commission.

N. V.

A. A.

J.-F. A.

OBSERVATIONS OF THE ILO COMMITTEE OF EXPERTS CONCERNING THE SOVIET UNION' APPLICATION OF KEY ILO CONVENTIONS

1986-1989

1986: Observations on Convention No. 29 (forced labor)

1987: Observations on Convention Nos. 29, 87 (freedom of association) and 111 (employment discrimination

1988: Observations on Convention Convention No. 29

1989: Observations on Convention No. 87

1986

C. 29 REPORT OF THE COMMITTEE OF EXPERTS

The Committee has taken note, with interest, of the Order of the Presidium of the Supreme Soviet of the Ukrainian SSR of 3 January 1985 on the manner of applying section 214 of the Penal Code of the Ukranian SSR, appended to the Government's report. This Order provides definitions of various terms in section 214 of the Code. In order to be able to appreciate the effect of the Order of 3 January 1985 on the scope of section 214 of the Penal Code of the Ukrainian SSR, the Committee has addressed a direct request to the Government. In this request the Committee asks for information on the practical application of section 214 read with the Order of 3 January 1985.

3. Supply of legislation. In its first report on the Convention, presented in 1958, the Government provided certain extracts from the Administrative Code of the Ukrainian SSR relating to compulsory service in cases of emergency. Since 1959 the Committee has requested the Government to supply a copy of the full text of this Code. In its report for the period 1979-81 the Government stated that work on the preparation of a new Administrative Code was under way, and that after the New Code had come into force a copy would be made available. The Committee has taken note with interest of the official text of the Code of Administrative Offences of the Ukrainian SSR adopted on 7 December 1984, which was supplied by the Government with its latest report. It hopes that the Government will also be able to supply in the near future a copy of the Administrative Code in force.

USSR (ratification: 1956)

The Committee notes the information supplied by the Government in its report and in its statement at the Conference in 1984.

1. Termination of membership of collective farms. In its previous observation, the Committee noted from the Government's report that the Presidium of the Union Council of Collective Farms, in an annex to its Decree No. 139 adopted on 8 February 1984, had issued an explanation concerning the application of clause 7 of the Model Collective Farm Rules, indicating that the management committee of the collective farm and the general meeting of collective farm members do not have the right to refuse a request made by a collective farm member to leave a collective farm. Furthermore, referring to clause 40 of the Instructions for the Maintenance of Work Books of collective farm members, the Presidium of the Union Council of Collective Farms indicated that the management committee of the collective farm must on the day following termination of membership of a collective farm, hand the work book of the former collective farm member to him. The Committee asked the Government to supply a copy of the official publication in which Decree No. 139 of 8 February 1984 and its annex were published.

The Committee notes the Government's reply that the text of the explanation was sent to the management committees of collective farms to be brought to the attention of collective farm members, and that according to the legislation of the USSR, the Union Council of Collective Farms is the body competent to give explanations in matters

of interpretation of the Model Collective Farm Rules. The Committee is addressing a direct request to the Government on this point.

2. Legislation concerning persons "leading a parasitic way of life". In its previous observations, the Committee has referred to the provisions concerning persons "leading, over a prolonged period of time, any parasitic way of life", inserted in 1975 in section 209 of the Penal Code of the RSFSR, which had previously applied only to persons systematically engaging in vagrancy or begging, and to corresponding provisions in other Union Republics. It noted the Government's statement that refusal to work could not be punished, either under section 209 of the Penal code of the RSFSR or under other provisions of the legislation, and that the reference to "persons leading any other parasitic way of life" in section 209 of the Penal Code of the RSFSR applied only to the specific offences of gambling and fortune-telling.

The Committee notes that in its statement at the Conference in 1984, the Government added that the concept of the legislator was based on the social value of productive work in a socialist society. Section 209 was therefore interpreted as applying to those cases when a person who was able to engage in productive work was, instead, making a livelihood from such activities as gambling and fortune-telling.

The Committee has also taken note, with interest, of the Order of the Presidium of the Supreme Soviet of the RSFSR of 13 December 1984 on the manner of applying section 209 of of the Penal Code of the RSFSR, providing definitions of various terms in section 209. In order to be able to appreciate the effect of the Order of 13 December 1984 on the scope of section 209 of the Penal Code of the RSFSR, the Committee has addressed a direct request to the Government. In this request the Committee asks for information on the practical application of section 209 reads with the Order of 13 December 1984 and on its impact on the point raised in the documentation communicated by the International Confederation of Free Trade Unions indicating that section 209 of the Penal Code of the RSFSR had been applied to certain persons who had income derived from giving private tuition or other lawful sources.

Venezuela (ratification: 1944)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation which read as follows:

1. Article 2, paragraph 2(c), of the Convention. The Committee has for some years been referring to sections 17, 21 and 23 of the Act of 1956 respecting vagrants and rogues, which empowers the administrative authorities to order internment in an establishment of rehabilitation and labour, an agricultural reformatory colony or a work camp, to reform vagrants and rogues. or to put them out of harm's way. The Committee noted the information provided by the Government on various occasions since 1970, to the effect that the Congress of the Republic is studying a draft text to reform the Penal Code, section 113 of which is to

Government on child labour was being collected and compiled from the various agencies.

The Committee notes that in its report on the application of the Convention which was received too late to be examined in 1986, the Government has supplied for the years 1982 to 1984 summary statistics of inspections, advisory services to employers on legal aspects, and enforcement action relating to "women and child labour", statistics of the numbers of children in establishments covered by the inspection and of permits issued for the employment of children, as well as general promotional activities by the Department of Labour. Concerning more specifically the issues raised under Article 25 of the Convention, the Government states that since 1978 tougher action and measures have been undertaken by the authorities on the abuse of child labour, and a confectionery factory owner was jailed for four years and three months for illegal employment and abuse of child labour with a fine of 20,000 Baht. The Committee also notes from the information submitted by INTERPOL to the Tenth Session (July-August 1984) of the Working Group on Slavery that between 1980 and 1982 the Thai police authorities received reports on slavery-like practices in three cases which took place in Udan Thani Province and gave rise to criminal prosecutions against all the alleged offenders.

In view of the serious and repeated allegations made and the Government's earlier reference to several arrests and prosecutions and to specific action by the Police Department and the Department of Labour on this matter, it appears to the Committee that the Government should supply more specific, detailed and complete information on the measures taken under Article 25 of the Convention than was provided in the Government's latest report. The Committee expresses the hope that the Government will ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are really adequate and are strictly enforced, and that the Government will supply full details on the measures taken to ascertain that the Convention is observed in practice. A number of questions arising in this connection are dealt with in a direct request to the Government.

USSR (ratification: 1956)

1. Legislation concerning persons "leading a parasitic way of life". In earlier comments the Committee had referred to the provisions in section 209 of the Penal Code of the RSFSR, and corresponding provisions in force in other Union Republics, concerning persons "leading a parasitic way of life", and had noted comments on the application of those provisions presented by the International Confederation of Free Trade Unions (ICFTU) in communications of 1 October and 20 December 1982. The Committee has noted a further communication from the ICFTU dated 24 July 1986, referring to Convention No. 29, as well as Conventions Nos. 111 and 122. It has also noted the Government's reply dated 10 February 1987.

In its last communication, the ICFTU has alleged that a number of Soviet citizens had been sentenced to prison terms either because of their involvement in emigration rights movements or because they had been found by judicial authorities to lead a parasitic way of life;

in many cases, the persons were said to have been earning a living by giving private tuition, an activity not prohibited in law.

In reply, the Government states that the persons in question were tried for specific offences provided for in Soviet legislation, this being in no way connected with their application to emigrate. The Government further states that it will give more detailed information in the report which it will supply in 1987.

The Committee notes that only one of the persons mentioned by the ICFTU is stated to have been sentenced to imprisonment for "parasitism" (on 19 December 1984) while working as a private teacher following a request to emigrate.

The Committee recalls that on 13 December 1984 the Presidium of the Supreme Soviet of the RSFSR adopted an Order on the manner of applying section 209 of the Penal Code of the RSFSR. According to that Order, the definition of the offence of "leading a parasitic way of life" refers to subsistence of an able-bodied adult for a prolonged period of more than four consecutive months or more than four months in the aggregate over a period of one year on "unearned income", with evasion of socially useful work. The Order mentions means obtained through gambling, fortune-telling, begging, petty speculation and other unlawful means as relating to unearned income.

The Committee notes with interest that in a recent decision, given on an appeal by the Deputy Attorney-General of the USSR, the Plenary of the Supreme Court of the Byelorussian SSR overturned the conviction for leading a parasitic way of life of a 19-year old graduate from a technical school who had refused various jobs offered to her and lived at her parents' expense. The Court held that penal responsibility for leading a parasitic way of life could not be incurred by the mere fact of not pursuing a socially useful activity, but required prolonged subsistence on unearned income, that is, means obtained through gambling, fortune-telling, begging, petty speculation and other unlawful methods, and that living on parents' means could not be considered subsistence on income obtained in an unlawful way.

The Committee hopes that the Government will provide full information on any further decisions of the courts which may show the manner in which the relevant legislative provisions are applied.

2. With regard to the manner in which collective farm members are informed of their right to leave the farm, the Committee looks forward to the Government's reply to the observation and direct request of 1986.

Venezuela (ratification: 1944)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation which read as follows:

1. Article 2, paragraph 2(c), of the Convention. The Committee has for some years been referring to sections 17, 21 and 23 of the Act of 1956 respecting vagrants and rogues, which empowers the administrative authorities to order internment in an establishment of rehabilitation and labour, an agricultural reformatory colony or a work camp, to reform vagrants and rogues

1987

Ukrainian SSR (ratification: 1956)

The Committee takes note of the report of the Government, which, it observes, contains no new information replying to its earlier comments but refers to the previous reports in respect of the law and practice concerning the application of the Convention.

Since the points raised by the Committee refer to texts or situations analogous to those of the USSR, the Committee invites the Government to refer to the comments made for that country under the present Convention.

USSR (ratification: 1956)

The Committee takes note of the information in the report of the Government and also of the discussion that took place in the Conference Committee in 1985. The Committee has for many years been making comments on the system of trade union monopoly, the links between the Communist Party and the trade unions and other questions including the right of meeting made subject to previous authorisation.

1. The Committee has observed that the 1971 Regulations respecting the rights of local, factory and works trade union committees, which attribute all trade union functions specifically and solely to the trade union committee of the undertaking, establishment or production or work organisation, exclude any other organisation representing workers of the same class from the possibility of carrying on activities in defence of its members' interests and of formulating its programme.

The terms of this text are so worded as to make no provision for the possible existence of other trade union organisations and to confirm the existence of a single-trade-union system.

The Committee has noted the statements by the Government that the basic principles of the labour legislation of the USSR and the provisions of the Labour Codes of the federated republics (for the RSFSR, section 7 concerning collective bargaining and section 230 concerning the rights of local, factory or works committees) do not prohibit the establishment of trade unions different from the existing ones, but has observed that, if a trade union should be established, it would have no practical possibility of exercising activities in defence of the occupational and economic interests of its members, since these functions are attributed to the trade union committees of the undertaking, establishment or organisation by the Regulations of 27 September 1971 and by certain provisions of the Labour Code of the RSFSR (sections 230, 231, 233, 234 and 235) of 9 December 1971.

The Committee again requests the Government to state whether any action has been taken by workers with a view to establishing workers' organisations independent of the existing trade union structure and, if so, what the results have been.

The Committee notes the statement in the report of the Government to the effect that it makes an arbitrary interpretation of Soviet labour legislation and draws erroneous conclusions. According to the Government, the Regulations concerning the rights of trade union committees apply to any committee irrespective of the place where it

is established. Furthermore the Government refers to the Decrees of the Presidium of the Central Council of Trade Unions of the USSR, dated 26 August 1977, 7 June 1974 and 24 January 1975, which contain provisions that govern the committees representing particular classes of workers (collective farms, collective fishing undertakings, students) and grant them rights for the defence of the specific interests of these workers.

The Government adds that the Committee ought thus to reach the conclusion that all trade union organisations enjoy rights that truly enable them to defend the specific interests of their members, if, indeed, the Committee has any wish to reach such a conclusion.

First, the Committee observes that the above-mentioned decrees are decrees for certain classes of workers issued under the 1971 Regulations concerning the exclusive functions of the trade union committees. Secondly, the Committee emphasises that its comments do not relate to the defence of the occupational interests of particular classes of workers but to the system of trade union unity in general, as confirmed by the legislation on behalf of the local trade union committees.

The Committee points out that, in the General Survey on Freedom of Association and Collective Bargaining it submitted to the 69th (1983) Session of the International Labour Conference, particularly paragraphs 132 to 138, it stresses that a system of trade union monopoly established indirectly by the law is in contradiction with the principles set forth in the Convention, which are intended to guarantee to workers the possibility, both in theory and in practice, of establishing in full freedom organisations of their own choosing to represent their interests. It also states that provisions on the rights and functions of trade union committees, by assigning trade union functions only to a given trade union organisation (as in the present case), appear to rule out the possibility of setting up another organisation representing workers of the same category.

The Committee therefore hopes that the Government will re-examine the situation in the light of its comments with a view to ensuring to the workers the possibility of establishing the unions of their own choosing, in accordance with Article 2 of the Convention.

The Committee also takes note of the statement of the Government in its report to the effect that the General Survey of 1983 reflects points of view of the Committee that are not supported by many members of the Organisation and is an example of the way in which the Committee imposes its opinion as the only possible one and also an example of the arbitrary interpretation of an ILO Convention.

2. The Committee points out that, under section 6 of the Constitution of the USSR, the Communist Party is the force that directs and guides Soviet society and is the nucleus of the "social organisations", terms that embrace the organisations representing the workers. In the view of the Committee, the law thus establishes a link between the Communist Party and the organisations in which the directing role falls automatically and permanently to the Party.

The Committee observes that the Government, as in the previous report, insists on the fact that it considers the question of the links between the Communist Party and the trade unions to be attached artificially to the application of the Convention and that there is

thus no legal basis for raising this question, since the Convention deals with relations between the trade unions and the State and not relations between the trade unions and the political parties. The Committee draws the attention of the Government to paragraphs 192 to 198 of its General Survey, where it expresses the view that in order to guarantee the independence of the trade unions, which alone can enable them to play the role of furthering and defending the interests of their members, it is necessary that there should be no legal provision linking them closely to a political party. The Committee observes, however, that by virtue of section 6 of the Constitution of the USSR the Communist Party of the Soviet Union is the force that drives and guides Soviet society and the nucleus of its political system, of the State bodies and of the social organisations; it defines the general lines of the development of society and the trends in the domestic and foreign policy of the USSR. Accordingly, under section 6 of the Constitution of the USSR, the Party lays down the framework and the social perspective in which the activities of the trade unions must take place, which does not guarantee to them the possibility of carrying on their activities freely and in full independence.

The Committee considers that this situation is such as to restrict the right of trade unions to organise their activities and formulate their programmes, as provided by Article 3. The Committee is also bound to repeat that, by virtue of Article 8, paragraph 2, the law of the land must not be such as to impair the guarantees provided for in the instruments.

The Committee trusts that the Government will be willing to review the questions that it has been raising in its comments for a number of years. It requests the Government to keep it informed of any development in this connection.

3. Other questions. In its previous comments the Committee had observed that any meeting or conference of occupational organisations was subject, by virtue of the Order of 15 May 1935, to prior authorisation. It had also noted the statement of a Government representative that the Committee would be informed of any developments that might take place in this regard. The Committee observes that the Government, in its report, does not supply any information on this point. It urges the Government to indicate in its next report if this Order applies to unions wishing to hold meetings and to meetings the purpose of which is to establish unions.

United Kingdom (ratification: 1949)

In relation to the observations it made in 1985 concerning the situation at the Government Communications Headquarters (GCHQ), the Committee takes note of the discussion which took place at the Committee on the Application of Conventions and Recommendations at the 71st Session of the International Labour Conference, and of matters brought to its attention in communications from the Government and in its report, concerning developments which have occurred since then. It has also received three communications on the subject from the

elements in the public service, on the criteria employed as a basis for deciding upon the reinstatement of these persons, and on the committees that have been set up in each Ministry, according to the indications by the Government, including copies of the relevant legislation and regulations. It requests the Government to continue supplying information on the re-examination of cases of dismissal and on the number of persons reinstated to their former duties.

3. The Committee noted previously that under section 3(d) of Martial Law No. 1402, as amended by section 1 of Act No. 2836 of 3 June 1983, Martial Law Commanders may expel from the region under their control persons suspected of being a threat to public order or security or those previously convicted on similar grounds.

The Committee notes the Government's statement in its report that this provision of the Martial Law has not been employed for two years.

Recalling that measures designed to protect the security of the State must be clearly defined and so worded as not to lead in fact to discrimination based on political opinion, incompatible with the Convention, the Committee requests the Government to indicate the steps taken or contemplated to ensure that the measures of exclusion under the above provisions of the Martial Law cannot result in discrimination based on political opinion. It requests the Government to supply detailed information on the application in practice of these provisions in the five provinces where they remain in force.

USSR (ratification: 1961)

1. The Committee notes the Government's report on the Convention. The Government has, in particular, supplied detailed indications in reply to the Committee's previous comments concerning the requirements imposed by a number of legislative texts on employees and on candidates for employment in academic, teaching, managerial and specialist positions, and on candidates for academic degrees, and concerning the manner of evaluating the fulfilment of these requirements. The Committee is again addressing a direct request to the Government on these matters.

2. The Committee has also noted a communication of 24 July 1986 from the International Confederation of Free Trade Unions (ICFTU) supplementing earlier communications of 1 October and 20 December 1982 and alleging the non-observance of this Convention and Conventions Nos. 29 and 122 in the USSR, as well as the Government's reply dated 10 February 1987.

In its communication of 24 July 1986, the ICFTU supplies a further list of Soviet citizens who are said to have been dismissed from their employment after they or members of their families applied to emigrate at different times between 1970 and 1983. About one-third of these persons are stated to be presently without employment and almost all of the others are said to be working in posts which appear to be much below their former positions and professional qualifications. A second list appended to the ICFTU's communication concerns persons stated to have been sentenced to prison terms further to their application for exit visas from the USSR; in this regard, the Committee refers to its comments under Convention No. 29.

In reply to these allegations, the Government states that the communication of the ICFTU is based on a non-objective and politically tendentious choice of facts and on juridically inconsistent generalisations. Such a broadened interpretation of the ILO Conventions is an improper attempt to represent an application for permission to emigrate from the USSR as a ground for discrimination and use of forced labour. The Government underlines that an application for permission to leave the USSR has no consequences, either in law or in practice, which could lead to discriminatory limitation of opportunities or to unequal treatment in employment and occupation, still less to criminal prosecution. An absolute majority of persons of Jewish nationality who emigrated from the USSR kept on working at their workplace as long as they wished, and until the moment preceding their departure. Those who, due to the character of their work, have had access to information of national security interest, being aware of the fact that on this ground their application for permission to emigrate could be rejected in accordance with the law, more often request to be dismissed of their work on their own initiative before they apply to the competent authorities for such permission, i.e. the initiative for a voluntary termination of employment comes from them. Persons mentioned in the second list enclosed with the communication of the ICFTU were put on trial for concrete offences provided for in Soviet legislation, and this was in no way connected with their application for permission to emigrate.

The Government furthermore indicates that new legislation regulating the procedure of entry and departure from the USSR came into force on 1 January 1987. Its purpose is to facilitate the consideration of applications of Soviet citizens and foreigners concerning entry and departure from the USSR. It is based on the principle of equality of all citizens before the law without distinction as to their origin, social and property position, race and nationality, sex, education, language and attitude to religion. There is no link between the intention to leave the USSR and dismissal from work. In conclusion the Government indicates that consultations conducted with the All-Union Central Council of Trade Unions and with the managers of several Soviet enterprises revealed concurrence of opinions with the views expressed by the Government.

The Committee takes due note of these indications. It also notes the Government's statement in its report, with regard to the Committee's earlier conclusions on the similar documentation submitted by the ICFTU in 1982, that the documentation did not deserve serious attention and could not be considered detailed and precise. The recent list communicated by the ICFTU of persons stated to have been dismissed from their positions mentions, in addition to the full names and addresses and professions of the persons concerned, their present employment situation. In the light of the Government's indications concerning the general practice in this field, the Committee would appreciate it if the Government would review the concrete situation of the various persons mentioned by the ICFTU and supply information on any measures presently taken or contemplated in their regard that may have a bearing on the observance of the Convention.

In this connection, the Committee, while aware that questions of emigration are not as such within the purview of the Convention, notes

with interest the new legislation referred to by the Government and hopes that its entry into force will facilitate the elimination of any subject of controversy regarding the employment situation of those concerned.

Yugoslavia (ratification: 1961)

The Committee notes that no report of the Government has been received.

1. In an earlier observation the Committee had noted that the reference to "moral and political suitability", as a condition for holding certain employment was declared to be unconstitutional by a meeting of the Presidents of the Constitutional Courts on 19 December 1979 and that this reference was to be gradually eliminated from the legislation and from advertisements for jobs. It has also noted that most of the amended legislative provisions call for an evaluation of the social and general behaviour of the candidates in relation to the implementation of the aims and duties provided for by law or to the achievement of the aims of a self-management socialist society.

The Government stated that intensive work on amending the rest of the legal provisions referring to "moral and political suitability" was under way and that the work was to be finished by the end of 1983. It also referred to various measures taken by the authorities, to the fact that the number of competitions referring to the requirement of moral and political suitability was diminishing and that it was expected that any such reference would disappear completely.

The Committee noted the information provided by the Government to the effect that the Federal Executive Council and the executive councils of the assemblies of the republics and autonomous provinces, on the basis of conclusions adopted in 1982 by the Assembly of the Socialist Federal Republic of Yugoslavia with a view to eliminating illegalities and other irregularities established in the exercise and protection of constitutional rights, freedoms, duties and responsibilities of the working people and citizens, had included in their programmes of work the amendment of the legislation containing "moral and political suitability" as a condition for the holding of certain jobs. The Government stated that these amendments had been made to most laws and regulations. The Committee had studied the survey, enclosed with the report, on the provisions of the legislation of the Socialist Republic of Slovenia and the Socialist Autonomous Province of Voyvodina that have been amended. The Committee noted the practical measures taken, particularly by the Social Attorney of Self-Management of the Socialist Republic of Slovenia, who had published a compulsory instruction on the basis of which communal social attorneys of self-management in 1983 issued 56 proposals for amendments, 33 warnings and 21 concrete proposals for the elimination of irregularities in self-management general enactments.

The Government stated that in accordance with the supervision of the observance of the procedure for competitions and public announcements, labour inspectors were obliged to take appropriate measures, within the limits of their powers, for the deletion of the

1988

USSR (ratification: 1956)

The Committee notes the information supplied by the Government in reply to its previous observation.

1. Resignation of members of collective farms. In its previous comments, the Committee raised the question of how members of collective farms are informed of their right to leave the farm, recognised in an explanation which concerns the application of clause 7 of the Model Collective Farm Rules, and which was adopted by the Presidium of the Union Council of Collective Farms, in an annex to its Decree No. 139 of 8 February 1984. The Committee notes with satisfaction that the substance of the explanation recognising the right of members to leave collective farms has been published in the daily newspaper "Trud" of 28 May 1987 (an organ of the All-Union Central Council of Trade Unions) and was also reported in the newspaper "Selskaïa Zhizn" and other mass information media. The Government also has indicated in its report that new draft model collective farm rules are currently being prepared which will include the above explanation and will be submitted for approval to the Fourth Congress of Collective Farms in 1988; the Committee looks forward to the publication of the new model rules.

2. Legislation concerning persons "leading a parasitic way of life". In its previous observations, the Committee referred to the provisions of section 209 of the Penal Code of the RSFSR and the corresponding provisions in force in other Union Republics concerning persons "leading a parasitic way of life".

The Committee noted that on 13 December 1984, the Presidium of the Supreme Soviet of the RSFSR adopted an Order on the manner of applying section 209 of the Penal Code of the RSFSR. The Committee also noted with interest that in a recent decision given on an appeal by the Deputy Attorney-General of the USSR, the Plenary of the Supreme Court of the Byelorussian SSR, referring to section 204 of the Penal Code of the Byelorussian SSR which corresponds to section 209 of the Penal Code of the RSFSR, overturned the conviction for leading a parasitic way of life of a 19-year-old graduate from a technical school, who had refused various jobs offered to her and lived at her parents' expense. The Committee requested the Government to supply full information on any further decisions of the courts showing the manner in which the relevant legislative provisions are applied.

The Committee notes the Government's indication that up to the present no further similar judicial decisions have been handed down, since, in view of the decision on appeal mentioned above, similar cases are settled in the public prosecutor's office at the stage of the preliminary inquiry. On this matter, a request is being addressed directly to the Government by the Committee.

3. With regard to the comments submitted by the International Confederation of Free Trade Unions, mentioned in the previous observation, the Government has supplied detailed indications to which the Committee refers in its direct request.

- section 389 which provides for the ability to requisition workers where a strike is considered to be such as to affect the vital interests of the nation.

The Committee notes from the Government's report that the above Bill, which has been the subject of broad consultations, is to be examined item by item by the Council of Ministers before being adopted by the Chamber of Deputies. Thus, after examining the Bill concerning the representation of staff in enterprises, the Council of Ministers is to address the question of aligning national legislation with international labour standards.

In this context, the Committee wishes to recall that, while the proposed amendments to the provisions of the Labour Code on which it has already given its opinion in previous comments, tend towards a better application of the Convention, the proposed amendment whereby an absolute majority of the workers concerned is needed to call a strike should be modified so that the decision to have recourse to a strike may be taken by a simple majority of the voters in an enterprise (excluding workers not participating in the ballot). The Committee again draws the Government's attention to the need to amend section 389 of the Code in order to confine the authorities' power to requisition workers to cases in which a strike would affect essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee trusts that it will be possible for the Bill relating to the above provisions to be re-examined in the light of its comments and to be adopted in the near future. It requests the Government to provide information on the progress made in harmonising its legislation with the Convention.

Ukrainian SSR (ratification: 1956)

The Committee notes the Government's report on the application of the Convention.

To the extent that the Committee's comments that are addressed to the Government of the USSR deal with situations and texts that are similar to those of the Ukrainian SSR, the Committee asks the Government to refer to the comments that it has made in respect of the Government of the USSR under this Convention.

USSR (ratification: 1956)

The Committee notes the Government's report and the debate and the comments at the Conference Committee in 1987.

It recalls that its comments dealt with the system of trade union monopoly, the links between the Communist Party and the trade unions and the right to meet being made subject to prior authorisation.

1. The right of workers to establish organisations of their own choosing without previous authorisation

In the comments that it has been making since 1960, the Committee has pointed out that any congress, conference or meeting, under the terms of Order No. 908 of 15 May 1935, was subject to prior authorisation. It considered that this Order could give the public authorities the possibility of opposing the establishment of a new organisation or a new federation or confederation by, for example, refusing authorisation for a constitutive assembly of an occupational organisation to meet.

In its previous reports, the Government on many occasions indicated that the provisions of this Order had never been applied to occupational organisations and that they were considered to have fallen into abeyance.

The Committee requested the Government to supply information on any change in the legislation in this respect.

In its last report, the Government indicates that Order No. 908 of 15 May 1935 has ceased to apply to the holding of congresses, conferences and meetings of co-operative organisations, trade unions and other social organisations, by virtue of Order No. 391 of the Council of Ministers of the USSR of 29 March 1988, and it supplies a copy of this Order which expressly provides in its title that Order No. 908 of 15 May 1935 partially ceases to be in force and, more specifically in the text itself, that Order No. 908 of 15 May 1935, "concerning authorisation for holding congresses, conferences and meetings" organised by co-operative organisations, trade unions and other social organisations is no longer in force.

The Committee notes with satisfaction the contents of Order No. 391 of 29 March 1988.

2. The right of workers to establish organisations of their own choosing outside the existing trade union structure

In its previous comments, the Committee noted several provisions of the Labour Codes of the federated republics and the regulations issued thereunder which establish the pre-eminence of the local factory or works trade union committee for the representation of workers, to the exclusion, in practice, of any other trade union organisation which might wish to act in defence of the occupational and economic interests of the workers in a factory or works, particularly in the RSFSR:

- section 7 of the Labour Code of 1971, which provides that collective agreements are concluded in the name of the employees by the local factory or works trade union committee with the administration of the enterprise or organisation concerned;
- section 230 of the Code, which deals with the rights of the local factory or works trade union committee and its relations with the management of an enterprise, institution or organisation, including: that of representing the interests of the workers in an enterprise, institution or organisation in the fields of

production and work and of organising socialist competition jointly with the management and of promoting a communist attitude towards work;
- sections 231, 233, 234 and 235 of the Code, which deal with the powers and functions of the trade union committee; and
- the Decree of the Presidium of the Supreme Soviet, issuing regulations respecting the rights of the local factory or works trade union committee, of 27 September 1971, which describes in detail the powers of these committees.

In its previous reports, the Government indicated that the Fundamental Principles Governing Labour Legislation of the USSR and the provisions of the Labour Codes of the federated republics do not prohibit the establishment of trade unions other than existing trade unions.

The Committee considered that, if a trade union were established outside the existing trade union structure, it would be impossible for it to exercise trade union activities to defend the occupational and economic interests of its members, since the 1971 Regulations respecting the rights of local factory and works trade union committees (and certain provisions of the Labour Code of the RSFSR) attribute these functions to the trade union committees of enterprises, institutions and organisations, which are bodies of the existing trade union structure, and it requested the Government to re-examine the legislation in order to guarantee workers, who so wish, the right to establish trade unions of their own choosing outside the existing trade union structure, in accordance with Article 2 of the Convention, and to indicate whether initiatives had been taken by workers to establish organisations that are independent of the existing trade union structure and, if this is the case, to indicate the results.

During the discussion in the Conference Committee in 1987 and in its last report, the Government once again stated that neither the Constitution, nor the Fundamental Principles Governing Labour Legislation, nor the Labour Code of the RSFSR restrict the number of occupational organisations in an enterprise. The State does not intervene in the internal workings of trade unions, which act in accordance with their by-laws, and the legislation does not provide for the registration of these by-laws. In the USSR, the trade unions participate in the management of the State since the legislation recognises their right to legislative initiative and to participate in the formulation of legislation. The new Act of 30 June 1987 on state enterprises (amalgamation), together with reforms in economic management, associates them more closely through workers' collectives in the management of enterprises on a new basis of collaboration between workers and management.

With regard to the 1971 Regulations, the Government indicates once again that no provision prohibits the establishment of trade unions. The Government emphasises the fact that the national legislation does not impose trade union monopoly; however, workers in the USSR are of the opinion that the unity of the trade union movement is the most important achievement of the workers and that the existence of several trade union organisations competing within the same country is prejudicial to the workers' struggle for their rights. The Government repeated its previous declarations to the

effect that trade union unity in the USSR had happened immediately after the socialist revolution in 1917. It admits, however, the need to improve trade union legislation and announces that proposals have been made to adopt a special law on trade unions to define the rights of workers, the functions, duties and role of trade unions and to empower them to reject any Government decision that is contrary to the interests of the workers and has been taken without the agreement of the trade unions, thereby giving the trade unions the role of a counterbalance to technocratic powers. The Government also supplied statistical data on the increase in the functions of trade unions and indicates in reply to the Committee's observation on this point that it has no information available on whether initiatives have been taken by workers to establish workers' organisations that are independent of the existing trade union structure.

The Committee notes these statements and this information and observes that the new Act on state enterprises of 1987 grants the work collectives - which includes workers, work-team leaders, foremen, specialists and representatives of management and the Party, trade union, young communists and other public organisations - greater independence in the management of the enterprise. It also notes that Decree No. 8430-XI of the Presidium of the Supreme Soviet of the USSR of 4 February 1988 introduces the self-management system for work collectives, and gives the works trade union committee greater power of control over the dismissal of managerial-level employees in the enterprise.

While noting these measures, the Committee points out that the principles of Convention No. 87 do not have the effect of supporting either trade union unity or trade union pluralism. The purpose of the Convention is to make trade union pluralism possible in all cases. In the Committee's opinion, the national legislation, and particularly the 1971 Regulations, which attribute trade union functions solely to the bodies of the existing trade union structure, restrict the possibility of other organisations, should they be established outside this structure, exercising trade union functions to further and defend the interests of their members and are liable to restrict the interest of workers in establishing other trade union organisations outside this structure.

The Committee notes the Government's reaffirmed wish to pursue dialogue and trusts that it will take into account the Committee's comments, in the context of its enterprise reforms, and that it will be possible to take measures to lift the legislative restrictions and recognise the rights and functions necessary to defend and further the interests of the members of any trade union that might be established outside the existing structure.

3. The leading role of the Communist Party

In its previous comments, the Committee noted that under the terms of the Constitution - and in particular of section 6, under which the Communist Party of the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system, of all state organisations and social organisations - that the Party determines the general perspectives of the development of society

within which trade unions must act, which, contrary to the provisions of Article 3 of the Convention, does not guarantee trade unions the right to exercise their activities freely and in full independence.

In its report, the Government emphasises once again the fact that the relations between the Party and the trade unions do not affect the application of the Convention since this relationship is of a political and not a legal nature. The Government points out that the Party and the trade unions have common objectives and that the role of the Party, as the historic guide of the trade union movement, is to increase the role of trade unions in all spheres of activity in the country without the Party exercising trade union activities. The Government points out that section 7 of the Constitution provides that trade unions participate in managing the State and in deciding political, economic and social matters in accordance with the functions accorded to them by the law. Trade unions act in full independence and the statutes of trade unions adopted at the XVIIIth Congress contain no provisions that give the Party the right to restrict the freedom or activities of trade unions, which are independent, non-political, mass organisations.

The Committee notes these statements and observes that the principle laid down in section 6 of the Soviet Constitution is taken up again in section 6 of the 1987 Act on state enterprises (amalgamation) which provides that the Party organisation in the enterprise is the political nucleus of the work collective, that it functions within the framework of the Constitution of the USSR and that it guides the work of the entire collective and its self-management bodies, trade unions, young communists and other public organisations, and that it supervises the activities of management.

The Committee is therefore once again bound to draw the Government's attention to the importance of the indepedence of trade unions, which is an indispensable condition to enable them to play the role of defending and promoting the interests of their members. In the Committee's opinion, the relationship established by the national legislation between the Party and trade union organisations is contrary to Article 3 of the Convention since the State, as the legislator, through this provision restricts the rights of such organisations to organise their activities and formulate their programmes.

The Committee hopes that it will be possible to re-examine these matters in the light of its comments. It requests the Government to report on any measures that have been taken or are envisaged to ensure that the legislation is in conformity with the Convention with regard to the right of workers to establish trade union organisations outside the existing trade union structure, should they so wish, and the right of workers' organisations to organise their activities and formulate their programmes in full independence and without interference from the public authorities.

ILO LABOR STANDARDS PROFILE:

USSR

Prepared/revised: 11/6/89

I. HISTORY OF COE/CACR EXAMINATION

A. Ratified Conventions Examined

	Committee of Experts	Conference Committee
1981:	52,87	87
1982:	29,87	29,87
1983:	29,52,87,111,122	87,111
1984:	29,111	29,111
1985:	87,111	87
1986:	29	none
1987:	29,52,87,111,122,124	87
1988:	29	none
1989:	52,87	none

B. Cases of Progress

1984 COE: C.29
1987 COE: C.124
1988 COE: C.29
1989 COE: C.87

C. Special Paragraphs in CACR Report

1981: C.87

USSR

II. CASES EXAMINED BY THE FREEDOM OF ASSOCIATION COMMITTEE

Pending Cases

No cases pending as of May 1989.

Recently Closed Cases

None since November 1987.

III. DIRECT CONTACTS AND OTHER SPECIAL PROCEDURES OR REPORTS

October 1980: direct contacts mission to examine various questions concerning international labor standards.

Article 24 representation filed by the Ontario Secondary School Teachers' Federation (OSSTF) in March 1987 alleging non-observance by the USSR of Convention 111 (employment discrimination) and 122 (employment policy). The representation concerned dismissals and imprisonment of Soviet Jewish Hebrew teachers. In November 1987 the Governing Body postponed "to a forthcoming session" discussion of receivability and establishment of a committee to examine the representation. (For text of representation see document GB.238/22/7.) In July 1989, the OSSTF withdrew its complaint on the grounds that the persons named in the complaint had been granted permission to leave the country. The matter is therefore closed as of the November 1989 Governing Body..

IV. RATIFICATION RECORD

Total number of ratifications as of 10/89: 46

Key conventions ratified and year of ratification:

C.29 (1956)
C.87 (1956)
C.95 (1961)
C.98 (1956)
C.100 (1956)
C.111 (1961)
C.138 (1979) (age 16)

GUIDE TO UNDERSTANDING THE
ILO LABOR STANDARDS PROFILE
ON THE USSR

1. Names of the Conventions Listed

No. 29 - Forced Labor Convention, 1930
No. 52 - Holidays with Pay Convention, 1936
No. 87 - Freedom of Association and Protection of the Right to Organize Convention, 1948
No. 100- Equal Remuneration Convention, 1951
No. 111- Discrimination (Employment and Occupation) Convention, 1958
No. 122- Employment Policy Convention, 1964
No. 124- Medical Examination of Young Persons (Underground Work) Convention, 1965
No. 138- Minimum Age Convention, 1973

2. The ILO Supervisory Bodies Listed

Committee of Experts (COE): An independent body of 20 eminent jurists, whose main task is to review the extent to which governments apply in law and practice the ILO conventions they have ratified. The Committee meets annually in Geneva. An American, Professor Benjamin Aaron, currently serves on the Committee of Experts.

Conference Committee on the Applications of Conventions and Recommendations (CACR): A tripartite standing committee of the ILO Conference which also reviews governments' compliance with ratified conventions. Using the report of the COE as its basis, the CACR develops a list of the most serious cases it wishes to discuss. However, the CACR only discusses a case if a representative of the government concerned agrees to appear before the Committee.

Committee on Freedom of Association (CFA): A nine-member tripartite committee of the ILO's Governing Body which examines complaints of infringements of freedom of association. Because of the fundamental nature of freedom of association, complaints may be filed against governments whether or not they have ratified the ILO conventions dealing with freedom of association, the right to organize and collective bargaining.

2. What the Term "Cases of Progress" Means

Each year in its report, the Committee of Experts lists those cases (usually about 20-30) in which countries have taken steps to change their law or practice in line with the Committee's

earlier recommendations. Listing a country as a case of progress does not necessarily mean that all problems have been eliminated, but that at least one significant change has been made.

Once in a while, the CACR also draws attention to cases of progress in its report to the ILO Conference. From the U.S. point of view, the Conference Committee does not make effective use of this positive means of encouraging the greater application of ratified conventions.

3. What the Term "Special Paragraph" Means

The CACR examines some 70 cases during the course of the ILO annual Conference. When it wishes to draw the special attention of the Conference to cases of serious, longstanding and pervasive violations of ratified conventions (usually human rights standards), CACR highlights its conclusions in those cases in so-called special paragraphs of its general report -- as opposed to tucking them away in the fine print of an appendix to the report along with all the other cases. Governments look upon special paragraphs as a very serious condemnation of their policies and practices.

4. What Direct Contacts Are

Occasionally one of the supervisory bodies may recommend that a government accept an on-site visit by representatives of the ILO for the purpose of discussing problems of compliance with ratified conventions or to investigate a complaint filed against the government. Such a direct contacts mission can only be undertaken on the invitation of the government concerned.

PREPARED STATEMENT OF RUDY OSWALD, DIRECTOR, ECONOMIC RESEARCH DEPARTMENT, AFL-CIO

Mr. Chairman, I welcome this opportunity to present the AFL-CIO support for Senate ratification of the International Labor Organization Convention No. 160 Concerning Labor Statistics. We urge prompt Senate ratification of this ILO Convention.

Ratification will help all of us here in the United States by raising the quality and comparability and usefulness of foreign labor statistics. This will provide a sounder factual background for the formulation of United States foreign policy and foreign trade policies.

ILO Convention No. 160 was adopted by the International Labor Conference at Geneva in July 1985. It requires ratifying governments to collect and publish regularly labor statistics in nine labor, social, and economic areas. I think it is important to note that the United States Bureau of Labor Statistics collects and publishes far more information -- and in wider scope and greater detail -- than the ILO Convention calls for. For all of its shortcomings, our system of collecting and publishing labor statistics in the United States is the best in the world and a model for other nations.

The ILO now collects and publishes a wide range of labor statistics for more than 150 nations of the world, and it helps developing countries improve their labor statistics systems. Unfortunately, the value of the ILO labor statistics is limited by a variety of weaknesses to be found in the labor statistics collected by the governments of many countries around the world.

We in the United States have a vital interest in getting more accurate, reliable, comparable, and timely information on social and economic conditions in other parts of the world. The pressures of international trade competition make this information not simply a matter of abstract interest but a matter of the utmost importance to us in the United States. We need to know about social and economic conditions of working people in other parts of the world

to conduct our foreign policy and our trade policies in a rational manner.

ILO Convention No. 160 calls on member nations which ratify this convention to collect and publish regularly basic labor statistics in these areas:

(1) economically active population, employment, and unemployment;

(2) structure and distribution of the economically active population;

(3) average earnings and hours of work, time rates of wages, and normal hours of work;

(4) wage structure and distribution;

(5) labor cost;

(6) consumer price indexes;

(7) household or family income and spending;

(8) occupational injuries and occupational diseases; and

(9) industrial disputes.

Article 2 calls on member nations to take into consideration the latest standards and guidelines of the ILO as they collect and publish the labor statistics required by this convention. Such action by the member nations will strongly encourage greater international comparability among national labor statistics programs and thus will make these national labor statistics more useful to all interested parties.

We are particularly pleased to note that Article 3 calls on governments to consult with representative organizations of employers and workers in designing and revising the concepts and definitions used in their labor statistics systems. This mandate is in line with long-standing regular consultation by the United States Bureau of Labor Statistics with its Business Research Advisory Committees and its Labor Research Advisory Committees. In these advisory committee meetings, union research people have an opportunity to express labor concerns and advise this

statistical agency on how better to meet the statistical needs of working people and their unions. These meetings are helpful for the labor research community, and they are helpful to the Bureau of Labor Statistics.

As part of our broader efforts to strengthen free, democratic labor unions in developing countries, AFL-CIO international institutes are helping foreign labor union officials improve their skills in research and labor statistics.

These institutes -- the American Institute for Free Labor Development in Latin America, the African American Labor Center, the Asian-American Free Labor Institute, and the Free Trade Union Institute -- have at various times conducted research and labor statistics training programs in the field and also here in the United States. And on some occasions these institutes have nominated foreign trade union representatives for training in labor statistics programs at the U.S. Bureau of Labor Statistics.

Obviously, all work with labor statistics would be made much easier if there were greater comparability among labor statistics around the world. Ratification of Convention No. 160 would promote this desirable situation.

Mr. Chairman, I appreciate this opportunity to present the support of the AFL-CIO for ratification of ILO Convention No. 160, and I again urge prompt Senate ratification.

Thank you.

PREPARED STATEMENT OF BRIAN J. GLADE, VICE PRESIDENT, U.S. COUNCIL FOR INTERNATIONAL BUSINESS

I am Brian J. Glade, Vice President of the United States Council for International Business, speaking on behalf of Ambassador Abraham Katz, U.S. Council President. Mr. Katz serves as the U.S. business spokesman on International Labor Organization matters in the President's Committee on the ILO and he is an elected member of the Governing Body of the ILO. Also present is Edward E. Potter, an attorney with the law firm of McGuiness & Williams, who

serves as legal counsel on labor issues to the U.S. Council. Mr. Potter and I serve as the business representatives on the Tripartite Advisory Panel on International Labor Standards (TAPILS), and Mr. Potter played an active role in the TAPILS legal review of ILO Convention 160.

The U.S. Council is the organization that represents American business interests on international economic policy issues at the major international economic institutions and to the executive and legislative branches of the U.S. Government. As the U.S. member of the International Chamber of Commerce, it consults with various bodies of the United Nations. It represents business views in the Organization for Economic Cooperation and Development as the U.S. member of the Business and Industry Advisory Committee to that organization. More particularly relevant to these hearings, the U.S. Council is the U.S. member of the International Organisation of Employers and has been the organization representing U.S. business in the ILO since 1979. In prior years, the National Association of Manufacturers (NAM) and the U.S. Chamber of Commerce had this responsibility on behalf of U.S. business. Both the NAM and the U.S. Chamber are members of the U.S. Council.

Just over two years ago Mr. Katz and we sat here before you to express the U.S. employers' views on U.S. ratification of ILO conventions 144 on tripartite consultation and 147 on maritime matters. That hearing was noteworthy from our perspective because it represented the first real discussion of U.S. ratification of ILO conventions since 1953. The United States, since joining the International Labor Organization in 1934, has taken a careful and cautious approach to the ratification of ILO conventions. Between 1934 and 1953, the U.S. ratified only seven ILO conventions: six concerned maritime matters and the seventh was a minor technical convention caused by the dissolution of the League of Nations and the establishment of the United Nations as the parent body of the ILO. None involved national labor policies related to collective bargaining or other substantive areas of domestic labor law.

With the ratification of Conventions 147 and 144 in particular, in 1988, the U.S. broke new ground. Not only in a historical sense, ratifying the first

conventions after almost 35 years, but in a legal and procedural sense, which bears on our discussion today of Convention 160.

As we stated to this Committee two years ago, although the U.S. already was in compliance with the procedural requirements of Convention 144, the implementation of one of its provisions was of particular concern to the U.S. business community. Under Article 5(1)(c), the United States is required to reexamine "at appropriate intervals...unratified Conventions and...Recommendations to which effect has not been given, to consider what measures might be taken to promote their implementation and ratification as appropriate." The business community was and continues to be concerned because many of the ILO conventions to be examined are at variance with U.S. law and practice, both at the federal and state levels.

This concern was addressed in the ratification history of Convention 144. We agreed not to oppose ratification of the convention if there were a public explanation of the basis, that is the groundrules, by which other conventions would be examined for ratification. I do not wish to take the Committee's time by chronicling the history of the groundrules. I will note, however, that it was in the President's Committee on the ILO that the U.S. tripartite community reached a unanimous agreement regarding the rules that would govern the review of ILO conventions. They are:

1. Each ILO convention will be examined on its merits on a tripartite basis.

2. If there are any differences between the convention and federal law and practice, these will be dealt with in the normal legislative process.

3. There is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will include possible conflicts between federal and state law that would be caused by such ratification.

A Senate resolution of ratification of Convention 144 states that Senate advice and consent to ratification of Convention 144 was subject to the declaration of the three groundrules.

Mr. Chairman, this background is necessary from our perspective in order to put ratification of Convention 160 into its proper context. For Convention No. 160 is the first ILO convention to be considered for ratification since the formal and public adoption of the groundrules for reviewing ILO instruments.

On April 18, 1988, the Tripartite Advisory Panel on International Labor Standards (TAPILS), unanimously agreed, in accordance with the three groundrules for tripartite review of ILO conventions under Convention 144, that there were no legal obstacles to ratification by the United States of Convention No. 160 concerning labor statistics. The Bureau of Labor Statistics had confirmed that the U.S. already fully complied with the convention and that ratification would require no modification of U.S. law.

The President's Committee, meeting on July 15, 1988, unanimously decided to recommend ratification. On January 12, 1989, President Reagan submitted this convention to the Senate for its advice and consent to ratification. The Convention requires that any member of the International Labor Organization that ratifies Convention No. 160 "undertakes that it will regularly collect, compile and publish basic labor statistics" in at least one of nine specific subject areas. The ratifying member also agrees to consult representative organizations of employers and workers and to "take into consideration" ILO standards and guidelines when designing or revising statistics required under this convention. In addition, the ratifying member agrees to notify the International Labor Office of the published statistics and of the "sources, concepts, definitions and methodology used in collecting and compiling" the statistics.

A ratifying member may choose to keep labor statistics from among nine categories. Convention No. 160 is a flexible document by virtue of its allowance for a ratifying country to take into account the particular economic

conditions and data collection practices of the country. The current laws and practices governing the various labor statistics programs in the United States meet and exceed the requirements of Convention No. 160.

In line with current practice by the Bureau of Labor Statistics and as provided under Convention 160, the BLS has a longstanding and productive policy of consulting with employers on its programs. BLS meets twice each year with the Business Research Advisory Council, comprised of business executives and which has a separate committee for each program area of labor statistics. The committees meet with technicians in their program area for in-depth discussion of the design, revision, maintenance, analysis and publication of the results of the statistical studies.

The most fundamental use for BLS data is economic forecasting. Statistics can provide companies with information about whether a particular labor market is tight or not, as well as the health of the national, regional, and local economies. In turn, this affects investment, marketing, and pricing decisions. Human resources executives can use wage indices to gauge movements. Some companies make internal use of such data as average earnings and hours worked. Some employers tie the provisions of contracts in formal fashion to the consumer price index or the producer price index.

The International Labor Office publishes a bulletin of labor statistics on a quarterly basis. It reports on employment and unemployment, hours of work, wages, and consumer prices, based on information gathered from ILO member states. The U.S. contribution is the most accurate and comprehensive data. Of the approximately 150 member states of the ILO, less than half are represented in the bulletin. This points out dramatically how the U.S. system is advanced compared to the rest of the world. (In the short time since its adoption by the International Labor Conferece, only thirteen nations have ratified ILO Convention No. 160.)

Statistical bureaus are beneficial to a free and open economy, and their data

can measure progress in a number of areas, such as combatting unemployment and creating jobs, and controlling inflation.

Accurate and complete data on the economy or the labor market can assist a country to confront the challenge of adjusting to worldwide competitive pressures and generating growth. U.S. ratification will demonstrate to countries like Poland and Hungary, for example, that in order to move effectively toward a more open economic system, it will be essential to compile and analyze comprehensive statistics on employment trends, prices, wages, and inflation, and productivity. Such information can furnish an industrial relations advantage to a dynamic economy.

In ratifying ILO Convention No. 160, the U.S. clearly demonstrates its priority commitment to providing accurate, timely, and honest information about its economy. To conclude, the U.S. Council supports U.S. ratification of ILO Convention No. 160 on Labor Statistics but we recognize that an essential prerequisite to ratification of any ILO convention by the U.S. is a comprehensive, tripartite legal review of ILO conventions to determine whether such ratification would modify existing federal and state law and practice.

PREPARED STATEMENT OF F.M. LUNNIE, JR., DIRECTOR, EMPLOYEE RELATIONS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman and members of the Committee, I am Pete Lunnie, director of employee relations for the National Association of Manufacturers.

NAM appreciates the opportunity to appear before you today as the Committee begins its consideration of International Labor Organization Convention No. 160 which deals with labor statistics. My comments this morning reflect policy adopted by NAM's Board of Directors and, more specifically, the views of our Subcommittee on Multinational Labor Relations.

There is little NAM can add regarding Convention 160 and its provisions or the importance and use of statistics that haven't been addressed by those who preceded me,

particularly the comments of Dr. Norwood, Commissioner of the Bureau of Labor Statistics. Accordingly, I will focus on the question of ratification in general which, for NAM membership, is a major issue.

NAM has a long history of association with the ILO though it has changed over time. Prior to the brief withdrawal of the United States from the ILO more than a decade ago, NAM and the U.S. Chamber of Commerce served as the U.S. Employer Representative. Since the United States returned to ILO membership, employer interests and concerns have been ably represented by the U.S Council for International Business. We are a member of the Council and work very closely with them on a variety of matters of mutual concerns to our respective memberships. An even closer relationship was forged when the Senate began the deliberations on Convention 144 and 147 which ultimately led to their ratification in 1988 -- the first such action by the United States since 1953.

More than the fact that it had been many years since the United States acted on an ILO convention, the ratification of Convention 144 was significant in that it reflected a departure by the United States from long-standing policy of ratifying only maritime standards.

As NAM testified in 1987, the Senate's consideration of Convention 144 raised fundamental concerns about whether its ratification would be misinterpreted as a change in that policy. We were concerned that it would increase pressure -- both domestically and internationally -- to adopt other non-maritime conventions. As you are aware, a number of them conflict significantly with U.S. labor law and practice. They include conventions on freedom of association, the right to organize and collective bargaining.

Our further reservation had to do with the mischaracterization of ILO conventions as being universally accepted worldwide. For example, in 1987, only six of the 158 ILO member states had ratified more than 50% of the 162 conventions and a quarter had adopted fewer than 10%. Our concern was heightened by the presence of worker rights provisions in the then pending trade bill.

Finally, as suggested by the Government and Employee Representatives, there was the

question of whether ratification of conventions was essential if the United States was to have significant influence in the ILO. Reviewing the United States record of very positive influence in that body, we were not inclined to accept the tenet that ratification was a requisite in achieving U.S. policy objectives.

Many of these reservations had been reflected in the actions in 1985 of the Employer representative to the Presidents Committee on the ILO and the Employer Counsel during their deliberations on Convention 144. Ambassador Katz and Mr. Potter were able to achieve a consensus on the three ground rules that would govern the future review of ILO conventions to ensure the ratification process would not be used to change U.S. labor law and practice. They are:

1. Each ILO convention will be examined on its merits on a tripartite basis.
2. If there are any differences between the convention and federal law and practice, these will be dealt with in the normal legislative process.
3. There is no intention to change state law and practice by federal action through ratification of ILO conventions, and the examination will also include possible conflicts between federal and state law that would be caused by such ratification.

Shortly after the President's Committee recommended that Conventions 144 and 147 be submitted for ratification, NAM's Board of Directors adopted policy on ILO conventions that largely built around these ground rules.

That policy led to our ultimate position not to oppose Convention 144 if the ground rules were formally acknowledged as criteria for the future consideration of other ILO conventions. We thank you, Mr. Chairman, and the Ranking Member, Mr. Helms, for your roles in making that inclusion a reality.

Our reservations then and now have less to do with the conventions that were and are pending before the committee per se than with the increased leverage that ratification provides to those who want the United States to adopt conventions that conflict significantly with U.S. and State law and practice.

Fundamental to these concerns are the potential adverse effect that ILO conventions might have on the United States economy, productivity, job growth, labor cost and labor

market flexibility. All of these are antithetical to the nation's goals to ensure that we are globally competitive and that Americans enjoy an increasing standard of living. The difficulties which Western Europe experienced earlier in the decade -- high unemployment, failed efforts in job creation and anemic growth -- are, we believe, symptomatic of the ideology embodied in many ILO conventions. Witness the OECD's and European Community's attempts to move away from social legislation and attendant labor market rigidities they feel have contributed to their economic malaise.

Mr. Chairman, I may have perhaps engaged in too long a review of the history which preceded this hearing and the pending issue before the Committee but thought it essential to underscore the importance NAM members attach to the ground rules.

NAM will not oppose ratification of convention 160. It does not conflict with the groundrules earlier agreed to. In fact, the programs of our Bureau of Labor Statistics far exceed the provisions set forth in the convention.

Let me conclude by noting, however, that this position does not signify a rethinking or change in the position we stated in 1987. We recognize there is and will continue to be increasing pressure for the United States to adopt futher ILO conventions. If and when they are submitted for the Senate's advice and consent, NAM will judge the conventions on a case-by-case basis, with the principal consideration being whether they conform to the criterion adopted during the ratification of ILO convention 144. Should they fail to meet this test, NAM will have no alternative but to oppose ratification.

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